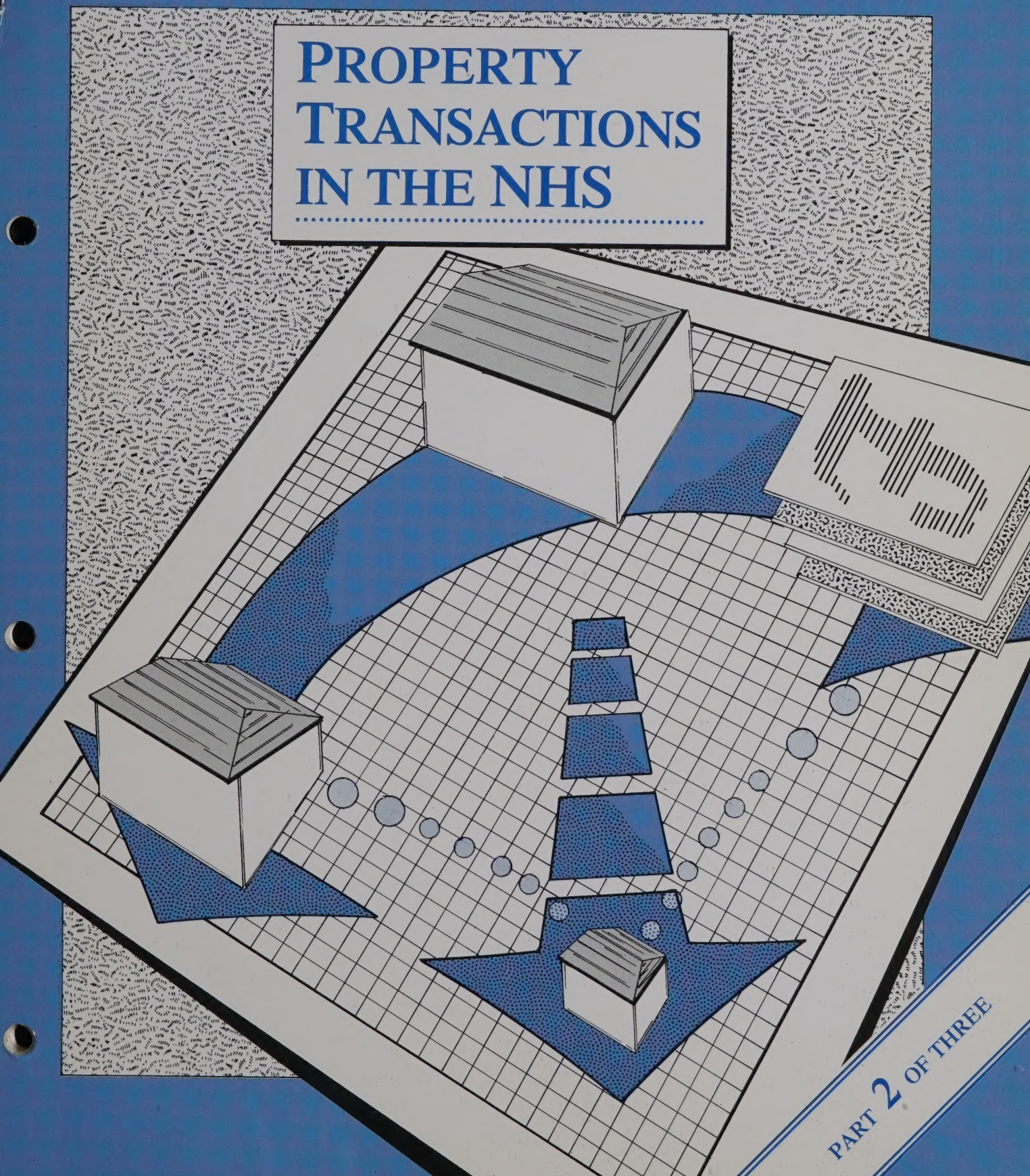
MC0327

DEPARTMENT OF HEALTH

ESTATECODE

PROPERTY TRANSACTIONS IN THE NHS



PART 2 OF THREE

DEPARTMENT OF HEALTH

ESTATECODE

PROPERTY TRANSACTIONS IN THE NHS

LONDON: HER MAJESTY'S STATIONERY OFFICE

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DEPARTMENT OF HEALTH

Part of
ESTATECODE
Level 3

PROPERTY TRANSACTIONS IN THE NHS

Part 2

Procedures to be used in Conjunction with Part 1

Department of Health
Euston Tower, 286 Euston Road, London NW1 3DN

JULY 1989

Preface to Part 1 and Part 2

1. Circular HC(86)13 advised Health Authorities (HAs) on what was expected of them in respect of estates work. This document sets out what is required of HAs in safeguarding the Secretary of State's estate and in conducting property transactions. Part 1 comprises the mandatory requirements on property transactions with which HAs *must* comply. Part 2 contains the procedures to be used when HAs are implementing Part 1. Part 3 comprises matters of general guidance which HAs may use depending on the specific case and the views of their professional advisers. All three parts have been incorporated into ESTATECODE in order to emphasise that property transactions are not an end in themselves but are one element, albeit an important element, of the overall policies and procedures in the management of the NHS estate.

2. The document has been written for use by Regional Health Authorities (RHAs) and District Health Authorities (DHAs). Separate instructions on the implementation of the document will be issued to the Special Health Authorities for the London Postgraduate Teaching Hospitals (SHAs), to Family Practitioner Committees (FPCs) and to the Special Hospitals Service Authority.

3. In this document the word 'property' is used to mean land with or without building(s) on it. Where the term 'Health Authority' (HA) is used it is intended as a reference to either a Regional or District Health Authority depending on the arrangements made, and extent of delegation, by individual Regions.

4. Where reference to the Department is indicated, submissions should be sent to the:

Department of Health
NHS Estate Directorate
Euston Tower
286 Euston Road
London NW1 3DN

unless a specific Divisional reference is stated.

Notes for Part 2

These Procedure Papers contain the procedures which must be used in conjunction with the mandatory requirements of Part 1 of this document. Where specific procedures are not laid down, HAs must act in accordance with the instruction of their professional advisers.

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Procedure Paper 1—Town and Country Planning

The Planning System

1.1 *General.* To achieve good estate management it is essential that HAs co-operate closely with local planning authorities on all aspects of planning matters. Local planning authorities have a responsibility for establishing medium to long-term plans for land development and the co-ordination of services in their areas, and a strategy of land disposals by HAs can make a significant contribution to meeting local development or other requirements. HAs must therefore seek to ensure that local planning authorities:

- are given the maximum notice possible of their strategies for land disposals so as to allow time for discussion of any population/community implications which may arise, together with the potential contribution that surplus land could make to an area's development needs

- receive maximum notification of specific land release proposals together with an offer of discussion well in advance of a formal planning application.

1.2 *HA Involvement.* HA staff involved in land transactions work must:

- be familiar with planning procedures—plan-making, submitting planning applications, legislation and policies regarding Green Belt, tree preservation, conservation, etc

- be familiar with specific local planning policies (including Conservation Area policies, Landscape Protection policies, etc), programmes for plan preparation, phasing policies, land development programmes, and proposals for local service provision.

In order to achieve this HAs should:

- consider establishing seminars for appropriate staff and advisers, together with local planning authority staff, so as to familiarise staff with planning procedures, regional and more local planning policies

- ensure that staff are conversant with the plans for their area, the timetable for up-dating and maintaining these plans and the appropriate contacts within relevant local planning authorities

- establish with local planning authorities (County Councils in the first instance) a mechanism for feeding-in proposals for disposals into the plan-making process and

the determination of service and infrastructure priorities (eg off-site highways or drainage).

1.3 *Structure Plans.* Structure plans, and proposals for their alteration or repeal and replacement, are prepared by county planning authorities and require the approval of the Secretary of State for the Environment. Structure plans have now been submitted and approved for all authorities in England and Wales. However, county planning authorities are required to keep their structure plans under review and may submit proposals for their alteration or repeal and replacement to the Secretary of State, who may consider it necessary to hold an Examination in Public into some or all of the matters included in them before deciding whether to approve them with or without modification.

1.4 *HA Involvement in Structure Plans.* It is unlikely that specific health service developments will be included in structure plans, though some major hospital proposals may be. Nevertheless, RHAs must keep in close touch with the progress of structure plans since they can have major implications for the planning of future health service provision. If the Secretary of State for the Environment holds an Examination in Public the RHA will be invited to attend if health service matters are involved. Where RHAs have objected to the plans at any stage, the Department should be informed in case it subsequently becomes necessary to take up the matter with DOE.

1.5 *Local Plans.* Local plans are not required for all areas but are prepared where they are needed to develop in greater detail the policies and general proposals of the structure plan on a range of issues. They are particularly valuable for identifying land to be brought forward for new development in the locations and on the scales proposed in the structure plan and for defining restraint areas. They set out the policies and standards which the planning authority will use in making decisions on planning applications and deal with environmental issues of local importance. They allow local planning issues to be examined and serve as a guide for developers, public authorities and others concerned with the development and other use of land. Planning authorities may also prepare:

- action area local plans—which are designed for areas selected for intensive change by development, redevelopment and for improvement

- subject local plans—which show in detail the authority's proposals on one or two particular issues (for example, mineral working).

1.6 *HA Involvement in Local Plans.* In the formative stages of drafting a local plan, local planning authorities have been asked to consult RHAs where their interests appear to be affected and to send them a copy of the plan when it is placed on deposit. If, despite this consultation, the RHAs' needs have not been met, they should raise objections with the local planning authority and, if necessary, be represented at the public local inquiry. The detailed consultation procedure over local plans is contained in Annex C to DOE Circular 22/84 (Memorandum on Structure and Local Plans) reproduced at Appendix 1A to this Paper.

1.7 *Unitary Plans.* The Local Government Act 1985 introduced a different procedure for structure and local plans in the metropolitan areas as a consequence of, and associated with, the abolition of the Metropolitan County Councils. In the Metropolitan Counties each Metropolitan District must prepare a unitary plan comprising a general statement of policy and land use strategy (part one) and detailed land use proposals (part two). The effect is that:

- structure and local plans for each Metropolitan District are combined into one unitary plan

- each Metropolitan area is covered by a number of separate unitary plans, rather than one structure plan and subsequent local plans, but the Act requires adjacent Metropolitan Districts to consult with each other in the preparation of their unitary plans which may be prepared concurrently.

Unitary plans are prepared in the context of regional strategic guidance provided by DOE in consultation with Shire Counties lying adjacent to each metopolitan area, and the Metropolitan Districts. There is no longer a development plan scheme or a process of certification of conformity in these areas. Existing structure and local plans in the Metropolitan areas continue in force until such time as they are superseded by unitary plans. As from 1 April 1986 each District Council in the Metropolitan areas became highway, and minerals and waste disposal planning authorities, and became responsible for determining all planning applications within their area.

1.8 *Simplified Planning Zones (SPZs).* The Housing and Planning Act 1986 amended the Town and Country Planning Act 1971 to empower local planning authorities to make simplified planning zone schemes. The relevant authorities (District Councils, London Borough Councils and Urban Development Corporations) are required to consider whether part or parts of their area could with benefit be designated an SPZ, to prepare schemes for such part(s), and to keep the matter under review. The effect of such a scheme when

adopted is to grant for a period of 10 years advance planning permission within the zone for the types of development specified in the scheme subject to any conditions, limitations or exceptions attached, without the need for separate planning applications and the associated fees. It should be noted that SPZ schemes cannot include land falling within a National Park, a Conservation Area, an Area of Outstanding Natural Beauty, an approved Green Belt or a Site of Special Scientific Interest. Nor can they override the normal statutory requirements for listed building consent, scheduled ancient monument consent, consent for the display of advertisements, consent for the stopping up or diversion of a right of way or consent for the cutting down, topping or lopping of any tree subject to a tree preservation order.

1.9 *HA Involvement in SPZ Schemes.* It is for the planning authority preparing or altering a scheme to decide which public bodies need to be consulted, having regard to Annex C to DOE Circular 22/84 (see Appendix 1A). HAs should be alive to SPZ initiatives and ensure frequent and regular contacts with planning authorities. Where surplus NHS property is situated within an SPZ there will be distinct advantages to HAs and potential developers, particularly in older urban areas, in that there will be a reduction in planning control and a greater level of certainty about the acceptability of projects.

1.10 *Defining Land for Future Health Service Use.* RHAs will need to consider whether additional land will be needed to carry out their development plans, even for schemes not at present included in a building programme. Since it is a general rule that land should not be bought until development proposals are worked out and agreed, it is important, particularly in urban areas, to safeguard sites expected to be needed for future health service developments. RHAs should seek to secure such protection by discussing sites for future health service developments with local planning authorities as soon as possible.

1.11 *Use of Development Proposals to Safeguard Land Required.* Where it is not possible for land for future health service use to be so defined on a local planning authority map, RHAs should submit a development proposal to the local planning authority in accordance with DOE Circular 18/84 Part IV (see Appendix 1B). This proposal may be in outline only. If the local planning authority agree the proposal, it will be registered in the addendum to the planning register which is open to public inspection. The local planning authority should also be asked not to grant planning permission which could conflict with an RHA's intention. However, if land is to be protected in this way, DOE require the

proposal to be firm and with a reasonable expection of the development proceeding within 10 years, though a longer period would be acceptable where a major development of great importance was proposed.

Development by Government Departments

1.12 *Changes of Use.* Changes in the use of land or buildings within the same class as set out in the Town and Country Planning (Use Classes) Order 1987 (SI 1987/764) and the Town and Country Planning General Development Order 1988 (SI 1988/1813) as amended, need not be referred to the local planning authority. Where it is intended to make a material change in the use of a building or land and such a change does not fall within the same class of the Use Classes Order, HAs must first consult the planning authority.

1.13 *Consultation.* Although Government Departments are not subject to the provisions of the Town and Country Planning Act 1971, they have agreed to consult local planning authorities before proceeding with development which would otherwise require planning permission (see DOE Circular 18/84 Part IV, at Appendix 1B). The 1971 Act uses the term 'development' requiring planning consent to mean 'the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change to the use of any buildings or other land'. HAs must take similar steps as would be required in the private sector if a proposed development involves new buildings, changes of use, ancient monuments, listed buildings of architectural or historic interest and buildings in conservation areas. HAs must also consult the planning authority if they propose to develop land, make use of it for some new purpose (eg as a tipping site or site for excavations) or use buildings in a manner which would conflict with any existing formal planning restrictions such as preservation orders. Before proceeding with a development HAs must await completion of the consultation.

1.14 *Exceptions.* Interior works in buildings, and exterior works which do not materially alter the appearance of the building, will not normally be defined as development under the 1971 Act, and it is not expected that HAs will need to consult the local planning authorities about such works, provided they will not affect the amenities or the environment. The Town and Country Planning General Development Order 1988 (SI 1988/1813) as amended covers certain works which, although defined as development, have been granted a general permission, thus avoiding the need to seek specific planning permission in these cases. In any event, whether consultation is required or not, early informal approach to the planning authority will often be useful particularly in the

case of development likely to be of special local concern to the public or to the local planning authority, or where it is not immediately clear whether a proposal requires to go through the planning procedure.

1.15 *Method of Consultation.* When the formal stage of consultation is reached HAs must comply with the provisions of paragraphs 9, 10, 11 and 18 of DOE Circular 18/84 Part IV (see Appendix 1B). Where the development involves a county matter and (subject to any arrangements between particular authorities) falls to be considered by the county planning authority, the district planning authority will notify the HA that the application has been referred to the county. The county planning authority will take account of the district planning authority's views and, where they themselves do not wish to make representations about the proposal, they will forward any representations by the district planning authority to the HA for consideration (this will not constitute an objection for the purpose of paragraph 23 of Appendix 1B). Where the development does not constitute a county matter, but would substantially and adversely affect the county planning authority's interests as the planning authority, the district planning authority are requested to act on the views of the county planning authority. In Greater London the London Boroughs only will be notified. Each Notice of Proposed Development sent to a local planning authority should be accompanied by a request for further details on Form LL4—see Appendix 1B paragraph 17.

1.16 *Notification to Owners and Tenants of Agricultural Land.* Agricultural tenants should be notified of the Notice of Proposed Development. Where the land is not already in Crown ownership, or subject to a Crown tenancy, the owner and any tenant with a tenancy of seven or more years to run should also be notified if this can readily be done at that time.

Listed Buildings and Conservation Areas

1.17 *General.* Policy and procedures on listed buildings and conservation areas are set out in DOE Circular 8/87. NHS buildings are subject to the listing and conservation area designation procedures which apply to Crown buildings. HAs will be notified by the local planning authority where a building used for NHS purposes has been listed by the Department of the Environment. Before a conservation area is declared, a local authority first designates the area and publicises its proposals in the local newspaper—but owners/occupiers are not notified individually. There is no provision for appeal against listing or inclusion in a conservation area. Although the provisions of the 1971 Act (sections 101 and 115) which enable notices to be served requiring repairs to be carried out to listed buildings (or, in the case of section 101, unlisted

buildings in a conservation area if a special direction has been made) do not apply to Crown buildings, Departments are expected to take steps to keep such buildings in a reasonable state of repair.

1.18 *Building Preservation Notice.* A local planning authority may serve a building preservation notice in respect of any building they consider to be of special architectural or historic interest, if they think that it is in danger of demolition or alteration. The notice is valid for six months from the date it was last served but ceases to be in force when the DOE decision on whether or not to list the building is made.

1.19 *Demolition or Alteration.* HAs must not arrange for the demolition, alteration, or extension of a listed building in any way which affects its character, without the prior written agreement of the local planning authority. Where the local planning authority objects to such a proposal, HAs should treat the matter as a dispute. A similar procedure should be adopted where it is proposed to demolish an unlisted building in a conservation area. (See paragraphs 31–35 of Appendix 1B and paragraph 12 of Appendix 1D).

1.20 *Ancient Monuments.* Scheduled monument consent must be obtained from DOE (HSD 3 Division) before any alteration, demolition, extension, etc is undertaken of a building scheduled as an Ancient Monument (section 2 of the Ancient Monuments and Archaeological Areas Act 1979 and paragraph 36 of Appendix 1B refer). The Historic Buildings and Monuments Commission for England should be consulted at an early stage in the preparation of any proposals affecting a scheduled monument.

Disputes

1.21 *Objection by Planning Authority.* Where the planning authority objects to the development or change of use proposed and the HA cannot reach agreement locally, the RHA should send the papers to the appropriate Regional Office of DOE with a request that they adjudicate. Details of any dispute about the period during which development should be started or plans forwarded should be treated similarly. DOE's method of dealing with such cases will depend upon the circumstances. Sometimes written representations or an informal meeting may suffice, or they may decide to hold a non-statutory public local inquiry. In all cases the local planning authority, the HA and other interested parties will be given an opportunity to express their views. In due course DOE will inform all parties of their decision. There is no further appeal procedure. Cases which are considered to be of particular sensitivity (eg Green Belt development) should be referred to the Department before being submitted to DOE.

1.22 *Other Objections.* Where the planning authority itself decides not to oppose a development it will nevertheless pass on to the HA any strong objections to the proposals which it receives. These must be considered by the HA and, if they are considered to be of substance, the papers should be sent to the Department who will consider whether the matter should be referred to DOE in accordance with DOE Circular 18/84 paragraph 21 (See Appendix 1B).

Start of Development

1.23 *Time Limits.* The time limits set out in paragraph 26 of Appendix 1B must be strictly complied with.

Consecrated Land or Land Comprised in a Burial Ground

1.24 *Power to Use Land.* If the Secretary of State acquires compulsorily any consecrated land or land comprised in a burial ground, section 128 of the Town and Country Planning Act 1971 empowers him to use that land for any purpose for which he acquired the land subject to the requirements of regulations made under that Act. This power is extended by section 87 of the NHS Act 1977 to all such land held by the Secretary of State, or which he acquires by agreement, for any purpose of the health service as defined by that Act.

1.25 *Conditions Governing Use of Land.* The use of these powers is subject to the Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950 (SI 1950/792) which prescribes the conditions governing the use of land containing a place of worship or used as a burial ground, the removal and reinterment of human remains and the disposal of memorials and registers.

Purchase Notices and Blight Notices

1.26 *General.* Part IX of the Town and Country Planning Act 1971 contains two sets of provisions under which owners of land which has been allocated by a development plan for public purposes may require their interests to be bought. Part V of the Land Compensation Act 1973 also refers.

1.27 *Purchase Notices.* Where planning permission is refused on the grounds that the land is indicated in a structure plan as required for NHS development and the owner claims that the land has become unsuitable for reasonable beneficial use in its existing state, he may serve a purchase notice on the local authority. If the local authority accepts it, or if the notice is confirmed by the Secretary of State for the Environ-

ment, the local authority is obliged to acquire the owner's interest. Local Authorities may therefore seek an indemnity from HAs against purchase notices before agreeing to the allocation of land for NHS development. Where they do so an agreement should be negotiated to provide that, on the service of a purchase notice, HAs will either immediately purchase the land or relinquish it so that planning permission is not refused for that reason.

1.28 *Blight Notices.* An owner-occupier of a house, small business or agricultural unit may serve a blight notice if he has been unable to sell in the open market, except at a depreciated price, because of an NHS development proposal. The notice is served on the 'appropriate authority' and in practice a notice may be served on an HA, the Secretary of State or both. A notice received in the Department will be forwarded to the RHA for action. If a counter notice or objection is not served within two months, the 'appropriate authority' is committed to buying the affected property. It will therefore be necessary for the RHA to consider immediately whether the land will be required for NHS purposes in order to decide whether the blight notice should be accepted or a counter notice served.

1.29 *Owner Requiring Purchase of Land Reserved for NHS Purposes.* There is no statutory provision for land reserved under the procedure outlined in paragraph 1.11 above but where planning permission is refused solely because of the reservation of the land for NHS purposes, and a request to purchase is received from the owner, HAs must urgently review the need for the land. If the need for the land is confirmed the HA should purchase it; if not they should inform the local planning authority that the land may be released.

Trees on NHS Land

1.30 *Tree Preservation Orders.* Section 2(1) of the Town and Country Planning Act 1984 empowers a local planning authority to make a tree preservation order in respect of Crown land in which there exists no interest other than the Crown's. Under section 2(3) of the Act the order does not take effect until the land ceases to be Crown land or becomes subject to a private interest and it will not require confirmation under section 60 of the 1971 Act until after the occurrence of either of those two events. Under section 2(4) of the Act the order will continue in force until the expiry of a period of 6 months from the effective date, or until the order is confirmed, whichever is the earlier.

1.31 *Effect of Orders.* The effect of such orders is to prohibit the cutting down, topping, lopping, uprooting,

wilful damage or destruction of the trees concerned without the planning authority's consent. Exemptions from the requirement for this consent are set out in the Town and Country Planning Act 1971 (section 60), the Town and Country Planning (Tree Preservation Order) Regulations 1969 (SI 1969/70) and the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975 (SI 1975/148) and include the felling of dangerous trees and felling immediately required for the purpose of carrying out authorised development.

1.32 *Consent to Orders.* Section 2(2) of the 1984 Act requires the consent of the 'appropriate authority' (ie the HA) to the making of such orders. Unless the HA take the view that the trees which are subject to the order are not worthy of preservation, they must accept the order and seek the local planning authority's agreement to any work which, if proposed by a private owner, would require the authority's consent under the order. HAs must not seek to defer consent pending disposal of the land. The intention of the 1984 Act is that such orders should be made in advance of disposal.

1.33 *Notification to the Local Planning Authority.* Section 2(5) of the 1984 Act requires the 'appropriate authority' to notify the local planning authority in writing as soon as the land on which an order has been made ceases to be Crown land, or becomes subject to a private interest. HAs must accordingly advise the local planning authority of the names and addresses of persons who have become entitled to the land or the private interest in it.

1.34 *Proposed Rejection of Orders.* HAs must not reject orders on the grounds that to accept them might jeopardise the future development value of the site—the proper procedure in such cases is for the order to be accepted and for the matter to be resolved as part of the planning application (and, if necessary, appeal) for re-development. Where HAs take the view that all or some of the trees are not worthy of preservation they must seek an opinion from an independent arboriculturist or other suitably qualified person. If the opinion supports the HA's view it should form the basis of discussion with the local planning authority. If agreement cannot be reached the matter should be referred to the Department for discussion with DOE. Where an order has been made and the HA are subsequently in dispute with the local planning authority about proposed work on the tree or trees concerned, the matter should also be referred to the Department.

1.35 *Protection of Trees not Covered by an Order.* Where the local planning authority inform the HA that they attach importance to the protection of particular trees, but do not propose to make an order, the agreement of the authority to any felling, etc should be sought on the same basis.

1.36 *Notification of Tree Work in Conservation Areas.* Section 61(a) of the 1971 Act requires that the local planning authority shall be given 6 weeks' notice of any intention to carry out tree work (ie cutting, topping, etc). This must be observed by HAs whenever the work, if proposed by a private owner, would require such notification. This notice gives the local planning authority a final opportunity to make a tree preservation order, should they so wish.

1.37 *Forestry Commission Controls.* HAs should also consult the Forestry Commission about the felling of trees. A licence is normally required for the felling in any one calendar quarter of more than 5 cubic metres of timber from trees of at least 8 centimetres in diameter. The Regulations are contained in the Forestry Act 1967 as amended by the Trees Act 1970 and the Forestry Acts 1979 and 1986. A leaflet "Control of Tree Felling" explains the Regulations and lists the appropriate legislation. Copies of the leaflet can be obtained from any Forestry Commission Office.

Certificate that it is not Intended to List a Building

1.38 *Applications.* Section 54A is inserted into the Town and Country Planning Act 1971 by virtue of paragraph 5 of Schedule 15 to the Local Government Planning and Land Act 1980. It provides that where an application for planning permission for any development involving the alteration, extension or demolition of a building has been made or granted, an application can be made to the Secretary of State for the Environment for a Certificate stating that he does not intend to list the building. All applications should be copied to the local planning authority. The effect of the issue of a Certificate is that the building cannot be listed within 5 years of the date of issue of the Certificate.

Planning Agreements

1.39 *General.* When disposing of surplus land HAs will frequently find that, when negotiating planning permissions, local planning authorities will require legally binding undertakings, either from HAs or the proposed purchaser/developer, before issuing a planning consent. For a private sector developer these undertakings may be entered into in accordance with the provisions of section 52 of the Town and County Planning Act 1971 and usually relate specifically to

the site referred to in the planning application. They are determined by negotiation and often involve the provision of one or more contributions, eg highway works, the dedication of land for specific uses, the payment to the local authority for related infrastructure expenditures. Guidance as to the propriety of these undertakings is contained in paragraphs 6–8 of DOE Circular 22/83.

1.40 *Section 52 Agreements.* HAs are precluded from entering into section 52 agreements. However, in submitting a planning application in the first place, an HA is anticipating the private sector requirements for development and the consequential contributions by way of planning agreements. Therefore, it is essential that HAs obtain professional and legal advice before concluding their negotiations with the planning authorities and that they limit their own undertakings to the procurement of a purchaser prepared to conclude a section 52 agreement. Clearly the more costly the section 52 implications are, the lower will be the HA's receipts from sale.

1.41 *Section 267 Agreements.* In more complicated disposals possibly involving one or more hospitals, or a phased disposal of a large site over several years, the necessity for each disposal phase to be self-contained in terms of the planning consent and its related section 52 agreement may involve the need for an overall site development plan to be agreed with the planning authority for the entire site or sites. In these circumstances section 267 of the 1971 Act operates to enable these intentions to be formalised by a legally binding agreement. These agreements must be prepared by solicitors with expert advice, as appropriate, from the planning and highway advisers and the appointed agents. They relate specifically to Crown land, must conform to the provisions of the local plan and require the approval of the Treasury prior to signature. Requests for such approvals must be referred to the Department.

Sites in the Green Belt

1.42 *General.* Policy on the re-use of existing buildings situated in the Green Belt is set out in DOE Circular 14/84. In addition, DOE have issued Circular 12/87 which relates specifically to redundant NHS buildings in the Green Belt. Circular 12/87 contains a set of guidelines (reproduced at Appendix 1C) to assist local planning authorities in preparing policies for the sites and in dealing with planning applications relating to them. The Secretary of State for the Environment and his Inspectors will have regard to the guidelines when dealing with any planning appeals, structure plan alterations or other planning matters which come to them for decision. HAs must adhere strictly to the guidelines. Guidance notes on their use are set out in Advice Paper 3.

Planning Applications for Surplus Land

1.43 *General.* The Town and Country Planning Act 1984 allows the Crown to apply for planning permission in its own right. Where the DV advises that sale prospects will be enhanced with planning permission, HAs or their agents must make such applications in accordance with Appendix 1D.

Annex C of DOE Circular 22/84 (Memorandum on Structure and Local Plans)

Consultation with Public Bodies and Authorities on Structure and Local Plans

1. It is for the local planning authority to decide at what stage of the preparation of a plan consultation should take place. In some cases, it may be sufficient to send a copy of the draft plan, or draft proposals for alteration or replacement, for information. The Government Departments and public bodies to be considered for consultation are:

IN ENGLAND

*Ministry and Agriculture Fisheries and Food
Ministry of Defence
Department of Education and Science
Department of Employment
(including Manpower Services Commission)
Department of Energy
*Department of the Environment
(including the Property Services Agency)
*Department of Trade and Industry
*Department of Transport
Development Commission
*Countryside Commission
Council for Small Industries in Rural Areas
*Nature Conservancy Council
Crown Estate Commissioners
*Forestry Commission
Post Office
(Postal Regional Headquarters)
*British Telecom
(Regional Headquarters)
*Regional Council for Sport and Recreation
*Regional Health Authority
*Regional Water Authority
*Sports Council
Commission for Racial Equality
Historic Buildings & Monuments Commission for England
*London Regional Transport Authority

IN WALES

Ministry of Defence
Department of the Environment
(Property Services Agency)

*see paragraph 5 of this Annex

Welsh Office
Countryside Commission Office for Wales
Crown Estate Commissioners
Forestry Commission
Area Health Authority
Development Board for Rural Wales
Land Authority for Wales
Nature Conservancy Council
Post Office
(Wales and the Marches Postal Board)
Post Office
(Telecommunications Board for Wales and the Marches)
Severn Trent Water Authority
Sports Council for Wales
Wales Tourist Board
Welsh Water Authority
Welsh Development Agency
Commission for Racial Equality

In the case of the Department of Transport, matters concerning civil aviation policy should be addressed to the Department's headquarters.

2. Whenever possible, consultees in the above should be directed to those aspects of policies or proposals which are likely to interest them particularly. For example, the Department of Industry (in Wales, the Industry Department of the Welsh Office) should always be consulted specifically on matters of major importance affecting industry, whether private or public sector, and especially on matters affecting the distribution of industry and policies for the winning and working of industrial minerals. The Department of Energy (or the Welsh Office) should be consulted on matters which affect particular energy sources or installations. Regional water authorities should be consulted on matters related to land drainage and flooding as well as on drainage and water services generally. The Ministry of Agriculture, Fisheries and Food should be consulted on agricultural land proposed for development, and where recreation, access and conservation may affect agricultural land. The Ministry of Defence should be consulted on any matters likely to have a bearing on its land holdings. The Countryside Commission will have a particular interest in all plans covering areas of countryside and urban fringe; they should be consulted about policies or proposals for any area within a National Park or Area of Outstanding Natural Beauty, or areas established as heritage coasts (see DOE Circular 12/72; Welsh Office Circular 36/72). The Crown Estate Commissioners wish to be consulted about structure plan proposals which affect any of the Crown Estates. The Forestry Commission should be consulted wherever forestry is a feature of the structure plan area, either as an industry, a contributor to the environment or a recreational resource.

National Parks & Access to the Countryside Act 1949

3. Public bodies, including other Government departments not mentioned in the list in paragraph 1 above, should be consulted where their interests appear to be affected or where they have specifically requested consultation. Where a major establishment (for example, a prison in the case of the Home Office) is material in the context of a structure or local plan, or stands to be adversely affected by proposals in it, the department responsible will wish to be consulted. Proposals for major residential development or traffic management schemes should be discussed with the Chief Constable of the relevant police force area. The appropriate Health and Safety Executive Area Office should be consulted on all significant matters affecting health and safety. These matters should be clearly set out and should include development involving atmospheric emissions or contaminated land and development near to nuclear installations, installations notified under the Notification of Installations Handling Hazardous Substances Regulations 1982 or any explosives factory or magazine licensed by the HSE or involving noisy processes. Consultation should also take place with statutory undertakers including the National Coal Board, the Central Electricity Generating Board and Area Electricity Boards, where their interests are likely to be affected by the location of population and of new development and where their activities are likely to have a major effect on the land use of the area. The Church Commissioners wish to be consulted where they are major landowners. The British Waterways Board should be consulted where their waterways are a significant feature of the area or would be affected by any proposals.

4. There is no longer a statutory requirement to consult new town development corporations. However, county planning authorities are asked to consult the new town development corporation or the Commission for New Towns where the structure plan includes a new town; and, similarly, the urban development corporation where the structure plan includes an urban development area. Local planning authorities should consult the new town development corporation or the Commission for New Towns where a local plan is being prepared in accordance with paragraphs 5.3 and 5.4 of this Memorandum.

5. Consultation between the planning authority and Government departments should normally take place with the regional/local/divisional offices of the relevant departments where these exist (as indicated by an asterisk in the list in paragraph 1 above). The regional offices will be able to refer to their Headquarters matters of concern to their department centrally and, in appropriate cases, departments will be able to undertake interdepartmental consultation through the machinery of the Regional Board.

Extract from DOE Circular 18/84 (Crown Land & Crown Development)

Part IV—Development by Government Departments

Introduction

1. This part of the memorandum sets out the arrangements by which Government Departments consult local planning authorities about their proposals for development. The arrangements apply to all bodies entitled to Crown exemption from the provisions of the Town and Country Planning Acts (these include Health Authorities and the Metropolitan Police). For the sake of brevity, these bodies are referred to as "Departments" whether they are Government Departments or non-departmental authorities. The Crown Estate Commissioners and the Duchies of Cornwall and Lancaster have agreed to consult local authorities about their proposals in a similar way.

2. Local authorities in England were notified in DOE Circular 8/84 of the setting up of the Historic Buildings and Monuments Commission for England. Paragraph 2(3) of Schedule 3 of the National Heritage Act 1983 provides that where the Commission act by virtue of a direction from the Secretary of State for the Environment under section 34(2) of that Act, the Commission shall enjoy the same privileges, immunities and exemptions as those enjoyed by the Secretary of State. Consequently where the Commission, acting in pursuance of a direction under section 34(2), propose to carry out development, they will not apply for planning permission but will notify the proposal to the local planning authority in accordance with the arrangements set out below. In all other cases, the Commission will seek planning permission for development they propose subject, of course, to the provisions of the General Development Order.

3. References in the following paragraphs to the Secretary of State and to the Department of the Environment are to be construed, as respects Wales, as references to the Secretary of State for Wales and the Welsh Office.

Scope of Consultation

4. Development by the Crown does not require planning permission. But Governments Departments will consult local

planning authorities* before proceeding with development (including material changes of use) which would otherwise require planning permission. Departments will use the General Development Order, as operating in the local authority area concerned at the time when a proposal is being considered, as a general guide to the kinds of development which they may carry out without consultation and will apply to their own development, *mutatis mutandis*, the permissions granted by the Order to private bodies, local authorities and statutory undertakers.

5. Proposals for the construction of trunk roads including motorways (special roads) are already subject to statutory procedures laid down in the Highways Act 1980 and the Acquisition of Land Act 1981. These procedures and the associated consultations with local authorities in practice achieve the same effect as those provided for in this memorandum. The Department of Transport and the Transport, Highways and Planning Group of the Welsh Office will, however, consult under the procedure laid down in this memorandum on proposals for providing a service area, rest area, picnic area or maintenance compound in connection with a motorway, or a lorry area, picnic site or lavatories, proposed in connection with a trunk road which is not a motorway.

6. Even where consultation would not be required on the basis set out above, Departments have agreed to notify the local planning authority of development proposals which are likely to be of special concern to the authority or to the public; for example, where there could be a very substantial effect on the character of a conservation area, or where there could be a significant planning impact, visually or otherwise, beyond the Department's own site. In any notification of this kind the local planning authority will be given an opportunity to decide whether to advertise it so as to give the public a chance to comment, and also to discuss with the Department

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*For the purposes of this memorandum the "local planning authority" normally means the district planning authority or the London borough council in whose area the land is situated or the Corporation of the City of London (as the case may be). But in paragraphs 18–26, references to the local planning authority are to be construed as referring to the authority who are required to consider the Notice of Proposed Development, ie the county planning authority in the case of development which constitutes a county matter, or the Greater London Council where they would deal with a formal planning application relating to similar development. However, in the London Docklands and Merseyside urban development areas, where urban development corporations have been established under section 135 of the Local Government Planning and Land Act 1980 and have had development control functions conferred on them under section 149 of the Act, the local planning authority means in all cases the relevant urban development corporation.

ways in which the proposal might be amended to overcome any objections to the proposed development.

7. Departments have agreed also to bear in mind that in any event, whether or not consultation or notification is required, an early preliminary approach to the planning authority will often be useful particularly in the case of developments likely to be of special local concern to the public or to the local planning authority.

8. It should, however, be noted that none of these consultations or notifications can fully apply to proposals involving national security.

Method of Consultation

9. When the formal stage of consultation is reached, the developing Department will send to the local planning authority four copies of a statement of their proposal marked "Notice of Proposed Development by (Department)" sufficient to enable the authority to appreciate its nature and extent. They will also supply four copies of a location plan showing the relationship of the proposed development to adjoining property and, except where the proposal involves only a material change of use, four copies of plans of the proposed development.

10. The Notice will make it clear whether the proposal is submitted with all relevant details, or in outline only to be followed by the submission of details. If it is in outline, the Notice will specify which, if any, of the reserved matters as defined in the General Development Order, ie siting, design, external appearance, menas of access and landscaping of the site are included. The local planning authority will not be expected to ask at this stage for further details except where this is essential to enable them to form a view on the proposed development.

11. Where the Crown does not hold all the interests in the land, the developing Department will advise the owner, any agricultural tenant and any other tenant with seven or more years of his tenancy to run of the submission and contents of the Notice of Proposed Development.

Action by the Local Planning Authority

12. The local planning authority will treat the Notice in the same way as they would a statutory planning application (but see paragraph 29 for entry into the register).

Outside London

13. Where the development would, if it were the subject of an application for planning permission, fall within paragraph 19 of Schedule 16 to the Local Government Act 1972, as substituted by section 86(2) of the Local Government Planning and Land Act 1980, the district planning authority will consult the county planning authority in the manner set out in paragraph 19 of Schedule 16. The district planning authority will notify any representations made by the county planning authority to the developing Department. If the county planning authority object to the proposal, this is to be considered as an objection by the local planning authority for the purposes of paragraph 23 of this part of the memorandum.

14. Where the development involves a county matter (as defined in paragraph 32 of Schedule 16 to the Local Government Act 1972 as amended by section 86(4) of the Local Government Planning and Land Act 1980) the district planning authority will send three copies of the Notice and plans to the county planning authority and will notify the developing Department as soon as may be that the proposal has been referred to the county. Where the county planning authority do not themselves wish to make representations about the proposal, they will nevertheless forward any representations by the other authority to the developing Department for consideration. These will not however constitute an objection from the local planning authority since, for the purposes of paragraph 23 of this part of the memorandum, the county planning authority is to be regarded as the local planning authority—see the footnote to paragraph 4.

London

15. The London borough council or the City Council will refer the Notice to the Greater London Council or will consult that Council in the same circumstances as they would if the Notice were a formal planning application for planning permission. Representations from these authorities will be dealt with as in paragraphs 13 and 14.

Fees

16. Notifications by Government departments of their proposed developments are not subject to the fees payable on submission of planning applications.

Further Information

17. The Notice of Proposed Development sent to the local planning authority may be accompanied by a request for further information in a form as set out in Annex A to this part

of the memorandum. The local planning authority are asked to complete this form as soon as possible from information already available and to return it to the developing Department before the planning aspects of the Notice are dealt with. They are asked also to bring to the notice of the Deputy Director (Transport) of the Department of Transport, or in Wales the Under Secretary, Transport, Highways and Planning Group, Welsh Office, any proposals likely to affect existing or proposed trunk roads (including motorways).

Publicity

18. Although development proposals of Departments are not subject to statutory publicity, local planning authorities should give them the same publicity by way of press advertisement, site notices, notification of neighbours etc, as they would if the development proposal were the subject of an application for planning permission. For their part, Departments will put notices in local newspapers and display notices on site where the proposal involves any "bad neighbour" kind of development to which section 26 of the Town and Country Planning Act 1971 normally applies (unless that development forms part of a much larger complex eg public lavatories in a motorway service area, swimming baths and gymnasia within Government establishments). The notices will describe the development briefly and state that any person who wishes to make representations about the proposal should address them to the local planning authority within a specified period.

Notification of Local Planning Authority's Views

19. The local planning authority's views on the proposed development should be sent to the developing Department within eight weeks from the date of receipt of the Notice of Proposed Development unless the Department have agreed in writing to an extension of time. In formulating their views, the local planning authority should have regard to the views of any bodies consulted and to any comments received by the authority in response to the publicity given. They should make it clear whether they find the development proposal acceptable and, if so, on what conditions (if any); or whether they find it unacceptable. In either case, reasons for the conditions or for considering the proposal unacceptable should be clearly stated. If no representations are received within the time limit, the Department will not assume that the local planning authority do not wish to comment but will remind them of the opportunity offered for comment and the need for an early reply. In the unlikely event of continued failure to respond, the Department will notify the Department of the Environment in accordance with paragraph 23.

20. Proposals which would constitute a departure from the development plan should be dealt with like applications for planning permission for similar development, in accordance with current arrangements for advertisement and for notification to the Department of the Environment. If it is decided by the Secretary of State that the proposal should be the subject of a non-statutory public local inquiry and subsequent consideration by him, the local planning authority will be informed accordingly.

21. In any case where strong objections are received to a development proposal which has not been notified to the Department of the Environment, it must be for the local planning authority to weigh up these objections and decide whether or not they should be supported. But where they decide not to oppose the development, they should nevertheless bring the objections to the notice of the developing Department. Where the developing Department consider that the substance of the objections is such that it would be appropriate for the Secretary of State to decide whether the development should proceed, the developing Department will so inform the Department of the Environment who may, after consultation with the parties, arrange for a non-statutory public local inquiry.

22. In rare cases developing Departments may need to ask for comments in a shorter period than eight weeks. If so, they will mark the Notice "Special Urgency". The publicity arrangements will not apply to these cases and there will be a time limit for comments of 14 days from the date of receipt. Where there is no response from the local planning authority, the developing Department will assume that they do not wish to comment and will proceed accordingly. The Department will, however, give the authority at least 48 hours notice, in writing, before commencing the development. Departments have agreed to use the "Special Urgency" procedure in as few cases as possible.

Method of Dealing with Objections or Failure to Respond

23. Where the local planning authority object to the Notice of Proposed Development or to any detailed proposals submitted after a Notice of Proposed Development in outline, where they fail to respond (except to a Notice marked "Special Urgency"), or where there is any unresolved disagreement, the developing Department, if they wish to proceed with the proposal, will notify the Department of the Environment submitting copies of relevant documents and plans. Any dispute about the period during which development should be started or detailed plans forwarded may also be referred to the Department of the Environment.

24. Where there has been a failure to respond the Department of the Environment will pursue the matter with the local planning authority before proceeding as in the next paragraph.

25. The method of dealing with proposals to which there have been objections will depend upon the circumstances but in all cases the local planning authority, the developing Department and other interested parties will be given an opportunity to express their views. It is expected that the written representations method will be suitable for most cases although, where there is no evidence of interest by other parties, the dispute may be resolved by means of a meeting of representatives of the local planning authority and the developing Department, chaired by an officer of the Department of the Environment. In other cases, it may be desirable to take more formal steps and to hold a non-statutory public local inquiry. The result of the Secretary of State's determination of the dispute between the developing Department and the local planning authority will subsequently be notified by the Department of the Environment by means of a letter to the local planning authority. Copies of this letter will be sent to those who have submitted views. Where a public local inquiry is held, a copy of the inspector's report will be sent to the local planning authority and to persons who have asked at the inquiry for copies.

Time Limits on Start of Development

26. Unless the developing Department, when submitting the Notice of Proposed Development, exceptionally ask for a longer period in which to start the development, and this longer period is agreed by the local planning authority, they will start the development within five years of the authority's response to the Notice or of any determination by the Secretary of State. Where the developing Department have submitted only an outline of the development proposed, they will submit details of the reserved matters to the local planning authority within three years of that response or determination or within such longer period as may be agreed. The eight week and fourteen-day time limits and provisions as to copies of documents and plans which apply to Notices of Proposed Development will apply equally to submission of the reserved matters. The period for commencement of the development will be that mentioned earlier in this paragraph or within two years from the date of agreement on reserved matters if this expires later.

27. If the developing Department do not submit details of the reserved matters or do not commence development within the appropriate period and still intend to carry out the development, they will submit a fresh Notice of Proposed

Development. If this relates to the same development as before, this will be stated in the Notice and no further information or documents will be forwarded unless the local planning authority so request.

Enterprise Zones

28. Government Departments will, as a matter of courtesy, notify enterprise zone (EZ) authorities of proposed development in an EZ which, if carried out by someone other than the Crown, would be granted planning permission by the EZ scheme and would comply with its planning conditions. Where any aspects of the proposed development are reserved for the approval of the EZ authority, the developing Department will send the appropriate details to the authority for their views and the dispute procedure in paragraphs 23–25 will be available if required. For proposed development which is excluded from the scheme's grant of planning permission, the procedure in paragraphs 9–30 will apply.

Register of Applications

29. Local planning authorities are required by law to keep a register of statutory planning applications. They are recommended to keep a non-statutory addendum to Part II of the register in respect of Notices of Proposed Development. It is suggested that appropriate headings for this addendum would be

(a) name of Department, date of submission of Notice of Proposed Development and particulars of the development;

(b) the decision (if any) of the local planning authority whether or not to oppose the development and any conditions on which agreement was indicated;

(c) the date and outcome of any reference to the Department of the Environment;

(d) the date and outcome of any subsequent reference of details for consideration by the local planning authority.

30. Where an entry is made in this non-statutory addendum to the register there should be an appropriate entry in the statutory index. The developing Department will warn the authority if in any case there are particulars which for security reasons ought not to be made available for public inspection or entered in the register.

Buildings of Special Architectural or Historic Interest

31. A Crown developer does not need listed building consent to demolish, alter or extend a building listed under section 54 of the Town and Country Planning Act 1971. Departments will however consult the local planning authority (on the lines laid down in paragraph 9 above) about any proposal to demolish a listed building (other than one scheduled as an ancient monument or held in Departmental care under the provisions of the Ancient Monuments and Archaeological Areas Act 1979—please see paragraph 36), or to alter or extend such a building in a way which would affect its character as a building of special architectural or historic interest. The local planning authority are asked to advertise such proposals and to notify the bodies specified in Annex B and relevant local amenity societies, in the same way as they would if application had been made for listed building consent.

32. In any case where the local planning authority do not themselves wish to make representations but where, following advertisement and notification, objections are received, the objections should be passed on to the developing Department. That Department will consider whether to proceed in the light of the objections, but if the Department consider that the substance of the objections is such that it would be appropriate for the Secretary of State to decide whether the proposal should proceed, they will forward the objections to the Department of the Environment for consideration. In that case and in cases where the Department of the Environment have been notified by the developing Department of unresolved disagreement between them and the local planning authority, the procedure will be substantially the same as that outlined in paragraph 25 above.

33. In the case of demolition of a listed building, Departments will give at least one month's notice of the proposal, before commencing demolition, to the Royal Commission on Historical Monuments, Fortress House, 23 Savile Row, London W1X 1AB, or in Wales to the Royal Commission on Ancient and Historical Monuments in Wales, Edleston House, Queen's Road, Aberystwyth SY23 2HP. This is to enable the Commission to consider whether to make a record of the building.

Unlisted Buildings in Conservation Areas

34. The Town and Country Amenities Act 1974 added a new section (section 277A) to the Town and Country Planning Act 1971 which brings the demolition of all buildings in conservation areas, with certain minor exceptions, under control. Departments will consult the local plan-

ning authority (on the lines laid down in paragraph 9 above) about any proposals to demolish a building in a conservation area, except where the building is included in one of the descriptions of buildings set out in paragraph 71 of DOE Circular 23/77 or paragraph 70 of Welsh Office Circular 61/81.

35. Where the local planning authority object to the proposed demolition, and the matter cannot be resolved to the satisfaction of both parties, the Department will bring the matter to the attention of the Department of the Environment. The procedure to be adopted will again be substantially the same as that outlined in paragraph 25.

Ancient Monuments and Archaeological Sites

36. In the case of proposed Crown development affecting a scheduled ancient monument or one held in Departmental care under the provisions of the Ancient Monuments and Archaeological Areas Act 1979 or any known archaeological remains, the developing Department will notify the Department of the Environment (Heritage Sponsorship Division) or the Welsh Office (Conservation and Land Division). In England, they will also consult the Historic Buildings and Monuments Commission for England.

Advertisements

37. Most outdoor advertisements displayed by Government Departments will be comparable to those whose display is authorised by the Town and Country Planning (Control of Advertisements) Regulations 1984 because they are "statutory advertisements" or traffic signs, or because they fall within other categories which may be displayed without express consent, by virtue of the provisions of the Regulations. Very occasionally, a Department may propose to display an advertisement which would require "express consent" if it were to be displayed by someone other than a Government Department. In that event, the Department will follow the procedures outlined in paragraphs 9–25 of this memorandum, adapted as appropriate for advertisement control purposes and will comply with the time limit imposed by regulation 20 on the display of an advertisement which has been granted consent. Local planning authorities are asked to respond accordingly and to enter the Notice of Proposed Development in the register of applications for consent kept under regulation 31, in the way described in paragraphs 29–30 above.

DOE Circular 18/84
Welsh Office Circular 37/84

Development by Government Departments

This forms relates to a proposal by the [Department], reference..... to undertake development at..... If the answer to any of the following questions is yes, would you kindly give brief details.

1. (i) Are you aware of any other Government Department, local authority, nationalised industry, or statutory undertaking, or the National Trust, owning or having an interest in the site or adjacent land or possessing training, firing or other rights over it?

   (ii) Are you aware of proposals for any such body to develop the site or adjacent land?

2. Is there on the site or in its immediate vicinity

   (i) any ancient monument on the statutory list, or shown on the 1/2500 (25 inch) or 1/10,000 (6 inch) OS maps, or known to exist from local knowledge or records, or

   (ii) any building of special architectural or historic interest on a statutory list or likely to be listed?

3. Is the site in a conservation area?

4. (a) Does the site contain minerals

   (i) the subject of a planning permission, or

   (ii) allocated in the development plan for working, or

   (iii) protected in the development plan as a reserve for possible future working?

   (b) Are there any other reasons for considering that the site might contain minerals of economic importance?

5. Is there within $\frac{1}{2}$-mile any

   (i) NHS hospital

   (ii) service hospital, or

   (iii) private hospital?

6. Are you aware of other information in relation to the site which might be material to the development proposal?

APPENDIX 1B
ANNEX B

DOE Circular 18/84
Welsh Office Circular 37/84

Ancient Monuments Society, St Andrew-by-the-Wardrobe, Queen Victoria Street, London EC4V 5DE.

Council for British Archaeology, 112 Kennington Road, London SE11 6RE.

Georgian Group, 37 Spital Square, London E1 6DY.

Historic Buildings and Monuments Commission for England, 25 Savile Row, London W1X 2BT.

Royal Commission on Historical Monuments, Fortress House, 23 Savile Row, London W1X 1AB.

Royal Commission on Ancient and Historical Monuments in Wales, Edleston House, Queen's Road, Aberystwyth SY23 2HP.

Society for the Protection of Ancient Buildings, 37 Spital Square, London E1 6DY.

Victorian Society, 1 Priory Gardens, Bedford Park, London W4 1TT.

In addition, notification should be sent to the appropriate local amenity society. Any representations received in response to these notifications should be taken into account when the application is being considered.

Except in the case of the three Commissions, the notification should be accompanied by the relevant extract from the revised statutory or provisional list of buildings of special architectural or historic interest.

Extract from Annex to DOE Circular 12/87

Guidelines for the future use of redundant hospital sites in the Green Belt

1. Re-use of the existing buildings for purposes within the accepted Green Belt categories (as set out in DOE circular 14/84) is the preferred option, especially where the buildings are of architectural and historical importance. There may in particular be scope for re-use by institutions.

2. However, if there is little or no prospect of viable re-use within those categories, then other uses are preferable to allowing the buildings to remain empty or grossly under-occupied. The aim should be to achieve redevelopment for other suitable uses by conversion of the existing buildings.

3. If the existing buildings, or part of them, are unsuitable for conversion, then redevelopment should not normally occupy a larger area of the site nor exceed the height of the existing buildings. The location of the new buildings should be decided having regard to the main features of the landscape and the need to integrate the new development with its surroundings (eg it may be more appropriate to site new development closer to existing development).

4. The amenity value of the site should be retained or enhanced where practical by preserving mature trees and keeping or laying out landscaped areas, and if possible opening them to public access with adequate provision for their maintenance.

5. Redevelopment should not normally involve additional expenditure by the public sector on the provision of infrastructure (eg on roads and sewerage) nor should it overload local facilities such as schools and health care facilities.

6. Local planning authorities should where appropriate include policies on these lines in their development plans.

Crown Land—Planning Permission[1]

1. The Town and Country Planning Act 1984 came into force on 12 August 1984. From that date Health Authorities and persons authorised by them are able to apply for planning permission, listed building consent, conservation area consent[2] or a determination under section 53 of the Town and Country Planning Act 1971[3] prior to the disposal of Crown land or of an interest therein.

Planning Permission

Application forms

2. Applications must be made on a form obtainable from the local planning authority. Each local planning authority prints its own forms and thus there are variations in design and lay-out among authorities but basically the information sought in the forms is similar. Usually four copies of the application form and supporting documents and plans are required. Since the forms will refer to the Town and Country Planing Act 1971 it should be made clear in a covering letter or in an endorsement on the form that the application is submitted under section 1 of the Town and Country Planning Act 1984.

3. Application may be for full or detailed permission for development or change of use, or for outline permission for erection of buildings only. In an outline application, any or all of the "reserved matters" (siting, design, external appearance, means of access and landscaping of the site) may be left for subsequent approval of the local planning authority. When approval of the reserved matters is sought it must be in writing with particulars sufficient to identify the outline planning permission. There is no standard form.

Authorisation of Applications

4. In cases where there is no private interest in the land, the application must be accompanied by a letter stating:

(i) That the application is submitted under Section 1 of the Town and Country Planning Act 1984; and

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[1] Reproduced from DA(84)26.

[2] Consent to demolish an unlisted building in a conservation area.

[3] Determination as to whether proposed operations or a change of use of land would constitute or involve development and, if so, whether an application for planning permission would be required.

(ii) That there is for the time being "no private interest in the land" (this is the actual wording of the regulations) which is the subbject of the application.

In other cases the Health Authority will need to support the application with the appropriate certificate under section 27(1) of the Town and Country Planning Act 1971. If the application is submitted by a person authorised by the Health Authority it must be accompanied by a copy of a letter of authorisation issued to the agent by the Health Authority. Item (i) can be incorporated in the terms of the authorisation and item (ii) specifically included in the authorisation letter. A draft letter, which is being adopted for use in PSA, is at Annex A; its use is commended.

5. Where an application is submitted under section 1 of the 1984 Act, by a Health Authority or by an authorised person, for planning permission for the winning and working of minerals by under-ground mining, paragraph 4 above applies; but the application has also to be accompanied by a "certificate" stating that "there is no person other than the Crown entitled to an interest in a mineral to which the application relates, but that section 27(2A) of the Town and Country Planning Act 1971 has been complied with"; or a certificate in terms prescribed in section 27(1)(cc). It is suggested that the former certificate could be included in the covering letter or authorisation letter; a form for the latter certificate should be provided by the local planning authority.

6. Where an application under section 1 of the 1984 Act is submitted by a Health Authority for a determination under section 53 of the 1971 Act (as to whether operations on or a change in the use of land would be "development" and, if so, whether a planning application would be required), the accompanying letter need embody the paragraph 4(i) requirement only. The paragraph 4(ii) requirement does not apply. Where the application is made by an authorised person, the application must be accompanied by a copy of the authorisation, but again the paragraph 4(ii) requirement does not apply. The model authorisation letter can be adapted for this purpose.

Publicity

7. The publicity arrangements for planning applications will be the same as those set out in paragraph 18 of DOE Circular 18/84 Part IV.

Fees

8. All planning applications will be subject to payment of the appropriate fee which will be advised by the local planning authority.

Time Limit on Planning Applications

9. Detailed planning permissions are normally issued subject to a condition that the development to which they relate must be commenced within five years from the date of the grant of permission. In the case of outline planning permissions, the conditions require applications for approval of any of the reserved matters (listed in paragraph 3) to be made within three years, and development to be commenced within five years of the date of grant of outline permission or two years from the final approval of reserved matters, whichever is the later. Local planning authorities have discretion to shorten or lengthen these periods. The purpose of these time limits is to encourage early implementation of the permission granted, to prevent an unnecessary accumulation of unimplemented permissions and to allow a planning authority to review the position on a new application after the permission has lapsed.

10. Under section 1(3) of the Act a planning permission in respect of surplus Crown land will not become effective until the land or an interest therein is disposed of. It has therefore been suggested that the time limit on the validity of permission should run from that event rather than from the date the permission is granted. That would be to the advantage of Crown land disposals but there are compelling arguments against such a change and none is proposed. Therefore when disposal procedures are likely to be protracted, Health Authorities should consider the following options:

i. To delay the planning application as long as possible. There is nothing to prevent informal discussions beforehand with planning authorities about their likely reaction to future planning applications.

ii. To ask planning authorities for longer time periods. This is, however, not recommended other than in exceptional circumstances, since planning authorities will probably be unwilling to look further ahead than the periods to which they are accustomed. Of the two, option (i) is to be preferred.

iii. If land has not been disposed of when expiration of the time limit draws near, Health Authorities should apply for a new permission in sufficient time (planning authorities are expected to determine planning applications within eight weeks but may not always do so). A

further planning fee will be payable but re-application can be made simply by letter containing sufficient information to enable the previous grant of planning permission to be identified.

Appeals

11. Appeals against (i) refusal of planning permission or of any consent, agreement, or approval required by a condition attached to a planning permission, (ii) the imposition of conditions or (iii) non-determination of an application within the period of eight weeks or whatever longer period may have been agreed in writing between the two parties, may be made under section 36 of the 1971 Act. Appeals are made on forms obtainable from DOE, Tollgate House, Houlton Street, Bristol BS2 9DJ.

Listed Building Consent and Conservation Area Consent

12. Applications for these consents follow very much the pattern set by applications for planning permission. Applications have to be made on a local planning authority form but only three copies are normally required. Certificates similar to those discussed in paragraph 4 are required and that requirement will also be amended in the case of applications by authorised persons. All applications for consent (other than those which affect only the interior of grade II listed buildings) have to be advertised but this is done by the planning authority. No fees are payable with applications for consent. Neither is there provision for outline applications. Full details of works proposed must be given and where consent is granted it will normally be subject to the five year period for commencement; the advice in paragraph 10 applies. Finally, there is a right of appeal similar to that in paragraph 11.

Section 53 Determinations

13. Applications must be made in writing and must contain a description of the operations or change of use proposed, with a plan sufficient to identify the relevant land. A few local planning authorities have devised their own forms of applications. Where application is made by a Health Authority the application should be shown as made under section 1 of the 1984 Act, but where application is made by a person authorised to do so by a Health Authority that person will be required by regulations under section 1 to accompany his application with a copy of the letter of authorisation, as for planning applications in paragraph 4. Appeals against determinations, or failure to give a determination are made under the same powers and procedures described in paragraph 11 above except that there are no prescribed appeal forms.

Miscellaneous

14. The Department of the Environment have issued Circular 18/84 to local authorities. It comprises:

Part I —a descriptive account of the provisions of the 1984 Act;

Part II —a short note about existing use of surplus Crown land;

Part III—the "Crichel Down" rules, as revised in December 1981; and

Part IV—the revised version of Circular 7/77 ("Development by Government Departments")

The Circular can be obtained from Government Bookshops at a cost of £2.60 per copy.

APPENDIX 1D

ANNEX A

Draft letter Authorising a person to make Application under Section 1 of the Town and Country Planning Act 1984

Town and Country Planning Act 1984

1. Section 1(2) of the above Act provides that any person authorised in writing by the "appropriate authority" may apply for planning permission, listed building consent, conservation area consent or a determination under section 53 of the Town and Country Planning Act 1971 in respect of Crown land. You have indicated that you wish to apply for ..... in respect of Crown land situated at ..... and shown for identification purposes on the plan attached to this letter.

2. You are hereby authorised to make the appropriate application, a copy of which should be sent to me when the application is submitted to the local planning authority. The application is to be at your own expense [and it must not be inferred from this letter that the land/property will be sold/leased to you or to any other person who may be similarly authorised to make an application].

3. It is confirmed that there is for the time being no private interest in the land.

4. The enclosed copy of this letter must accompany your application to the local planning authority [in lieu of the certificate under section 27 of the Town and Country Planning Act 1971 which the application form normally requires.][1] [in lieu of the certificate under regulation 5 of the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) Regulations 1977 which the application form normally requires][2].

5. Would you kindly inform me/let me have a copy of the local planning authority's decision in due course, or return both copies of this authorisation letter to me if you decide not to proceed with the application.

Notes 1 To be included only in letters authorising applications for planning permission.

2 To be included only in letters authorising applications for listed building consent and conservation area consent.

Procedure Paper 2 — Secretary of State as Landlord

(NOTE: This paper does *not* apply to staff residential accommodation on which separate instructions have been issued.)

General

2.1 Where NHS property is temporarily unused, or where part of a property is unused and disposal of that part is not feasible or desirable, the property may be leased out until such time as it is needed for NHS use or can be disposed of. Section 7 of the Health and Medicines Act 1988 enables HAs to increase their income by making better use of resources (including the estate) not required for treating patients. HAs should therefore always be alive to the commercial possibilities of generating income from unused or underused property. HN(89)9 and its accompanying booklet set out various possibilities and constraints. HAs should bear in mind that licences relating to business premises do not fall within the provisions of the Landlord and Tenant Act 1954, and they should avoid granting licences where there would in effect be exclusive possession of accommodation (for a term at a rent) giving rise to a tenancy with all the benefits of protection.

Lease Terms

2.2 Intending lessees should not normally be allowed to occupy NHS premises before the lease is granted but, exceptionally, early possession may be allowed once written terms have been agreed.

2.3 The duration of a lease will depend on local circumstances but it must not exceed the life of the property nor should it go beyond the time when the property will again be required for NHS purposes or could be disposed of.

2.4 Where property is to be let for a term of years certain, HAs should avoid giving security of tenure to the tenant. An agreement excluding the provisions of Part II of the Landlord and Tenant Act 1954 (sections 24 to 28), must be secured by application to the County Court made jointly by the intending lessee and the HA at the former's expense, and pursuant to section 5 of the Law of Property Act 1969, before entry is allowed and before the lease is granted.

2.5 The lease should provide for the premises to be adequately insured and kept in good repair and for the tenant, if a non-Crown body, to comply with the require-

ments of the Town and Country Planning, and other, Acts. In the case of long leases there should also be provision for rent reviews at stated intervals.

2.6 HAs must ensure that tenants comply with the terms and conditions of tenancy agreements. Where HAs propose to take action for any alleged breach of covenants the matter should be referred to the DV for advice.

Improvements to Premises

2.7 The provisions of Procedure Paper 3 apply in reverse.

Rent Reviews

2.8 HAs must ensure that review action is started at the earliest possible stage in order for the DV to report on the proposed new rent, and for notification to be given to the tenant in accordance with the terms of the tenancy.

Extensions and Renewals of Leases

2.9 Where a lease does not provide for renewal on stated terms, the provisions of Procedure Paper 3 apply in reverse and, in cases where it is intended for the lease to be renewed, an application should be made for an interim rent to be fixed by the Court. In addition, under section 57 or 58 of the Landlord and Tenant Act 1954 the Secretary of State may refuse new tenancies on grounds of Departmental necessity or national security. If an HA considers that a certificate under section 57 should be issued a submission must be made to the Department. If the Secretary of State agrees to consider giving a certificate, the HA should serve the requisite notice on the tenant in the name of the Secretary of State following the wording of the Act as closely as possible. If any representations are received they should be sent to the Department. If, then, the Secretary of State grants the certificate, the HA should proceed as in section 57 and also submit to the Department for approval a proposal to pay such compensation as may be payable under sections 59 and 37 of the Act.

Use of NHS Premises by Local Authorities

2.10 The Secretary of State has a duty under section 26(3) of the NHS Act 1977 to make available to local authorities the use of premises, so far as this is reasonably necessary and practicable, to enable local authorities to discharge their functions relating to social services, education and public health. A formal lease on terms recommended by the DV will generally be appropriate for the use of NHS premises in such circumstances.

2.11 Where local authority social workers are based in NHS premises to give a service to the hospital it is desirable, and generally more practical, for the HA to bear all the costs of premises.

2.12 Where a new permanent building is required for a hospital special school for the education of mentally handicapped and/or other long-stay children and young people in hospital, land may be leased or sold to the local authority.

Managing Agricultural Land

2.13 *General.* The Agricultural Holdings Act 1986 (which consolidates the earlier legislation) applies to land owned by Government Departments and, when considering the letting of agricultural land, HAs should have regard to the effect of the Act in relation to the recovery of possession and compensation. In particular it will not normally be appropriate to grant agricultural tenancies from year to year as, under the terms of the Act, these become protected tenancies.

2.14 *Short-Term Letting and Licence Arrangements.* Where land is to be let for use as agricultural land, HAs may operate one of the following arrangements which secure the right to regain vacant possession:

- Section 2 of the 1986 Act. Under this section the following are not regarded as tenancies from year to year:

  — lettings for less than one year (or licences for a longer period) which have the prior consent of the Divisional Office of the Ministry of Agriculture Fisheries and Food

  — agreements for the letting of land, or the granting of a licence to occupy land for grazing or mowing for a specified period of the year not exceeding 364 days.

- Section 5 of the 1986 Act. Under this section the following are not regarded as tenancies from year to year:

  — tenancies with a term of between 2 and 5 years agreed by both parties which have the prior consent of the Divisional Office of the Ministry of Agriculture Fisheries and Food.

- Gladstone and Bower Tenancies. Tenancies for a term of more than one year but less than 2 years.

The DV should be consulted on all proposed lettings.

2.15 *Tenancy Agreements from Year to Year.* In exceptional circumstances where it is not possible to bring the letting within the restricted arrangements set out in paragraph 2.14, the tenancy agreement must contain a clause in accordance with proviso (b) to section 25(2) of the 1986 Act to permit repossession in less than 12 months where the resumption of a non-agricultural use is envisaged. The operation of notices to quit is subject to the 1986 Act. A tenancy terminated by a notice to quit entitles the tenant to compensation and the notice should allow, if possible, for the harvesting of growing crops to reduce the compensation payable.

2.16 *Review of Agricultural Rents.* Rents of agricultural land covered by the 1986 Act can only be reviewed (in effect) at intervals of not less than 3 years and the tenant must be given at least a year's notice of the intended review by means of a notice demanding that the rent payable shall be referred to arbitration (see section 12(1) of and Schedule 2 to the 1986 Act). It is essential that the action necessary to implement the review should be commenced at least eighteen months prior to the date on which the proposed new rent is to take effect (this date is that on which a notice to quit would operate — see section 25 of the 1986 Act). The HA should send a formal notification to the tenant that it is proposed to review his rent and copy this notification to the DV requesting him to negotiate the new rent. If agreement has not been reached 3 months before the effective date, consideration should be given to invoking the arbitration provisions of the Act.

Use of NHS Premises by Voluntary Bodies

2.17 Where a voluntary organisation is solely responsible for providing and running a shop or canteen on NHS premises, no charge should be made for the accommodation provided nor should a charge be made when the shop/canteen is provided by the HA but staffed by a voluntary organisation. Where NHS land is made available to a voluntary organisation for them to erect premises for the provision of services (hospital canteens, shops, etc), a nominal rent must be charged and a lease drawn up having regard to the provisions of paragraph 2.4.

University Medical School Facilities

2.18 *General.* Where a joint hospital and university medical school development takes place the arrangements between the HA and the university will vary as follows:

- Where the Secretary of State purchases a new site for the development the university must pay:

  — a share of the site costs plus a nominal rent, or

— a market rent

together with a proportionate share of the total building costs.

- Where the development is on an existing NHS site the university must pay:

  — a proportionate share of the building costs, and

  — a market rent.

- Where existing NHS premises are to be used the university must pay:

  — a market rent.

Where a market rent is payable it should normally be capitalised and the lease granted at a nominal rent.

2.19 *Lease Terms*. Terms and conditions for the lease of land and building should be as for a normal lease but with the following additional provisions:

- the term should normally be for 99 years
- where a market rent is payable the lease should provide for periodic rent reviews
- after 10 years the university to be in a position to give a year's notice of intention to cease using the building for the purpose for which it was erected
- on receipt of such notice the Secretary of State to have the option, to be exercised not later than six months before the notice expires, of taking over the building on payment to the university of a fair price as assessed by the DV, in which case the lease will terminate
- if the option is not exercised, the university to have the right, after expiry of the notice, to use the building for some university purposes other than that for which it was erected subject to the consent of the Secretary of State, such consent not to be unreasonably withheld
- the university to take the necessary action under the Town and Country Planning Acts and Building Regulations (in Inner London, the London Building Acts), in the event of the Secretary of State consenting to alterations or additions to the building.

2.20 Where the building is shared the following conditions should also apply:

- the lease to define the nature and basis of reimbursement by the university of any operating costs incurred by the Secretary of State in providing shared services, eg heating, lighting, rates contribution, maintenance, etc

- the Secretary of State to carry the insurance risks for damage or loss. (In the event of either, the HA and the UGC/university should jointly consider the question of the cause and assess the apportionment of the cost of replacement/reinstatement. The Secretary of State would not be liable for replacement of university equipment or furniture in university areas of the hospital.)

2.21 Where existing NHS accommodation is leased and the arrangement is intended to be on a permanent basis, it will generally be appropriate for the HA to grant a long lease — ie 21 years and upwards depending on the life of the building.

Concessionary Leases

2.22 *General.* A lease at a rental less than the DV's valuation may be considered where a voluntary body proposes to use NHS property (which is surplus or temporarily unused or has no foreseeable future use) for a service which complements an NHS service or which would otherwise have to be provided by an HA. Concessionary leases must be justified by the expectation that the financial loss will be matched by an equivalent financial or service benefit to the NHS. Concessionary leases should not be considered for:

- Government funded bodies — who should seek additional funds from their sponsoring Department

- Local authorities — which should be covered by joint financing arrangements

- Commercial undertakings — unless they provide a service to staff and/or patients (eg a bank) and can demonstrate that the service would be uneconomic if a market rent was charged.

The lease of land to Housing Associations for the provision of staff residential accommodation is an exception to the general rules, and may be allowed where it is the most cost effective means of providing such accommodation. All proposals must be referred to the Department for approval.

2.23 *Granting Leases.* Where the concession is within the Secretary of State's statutory powers (ie sections 23, 26 or 27 of the NHS Act 1977), and where its value is £250,000 or less, RHAs may grant the concession without reference to the Department unless the case is considered to be novel or contentious. RHAs may also grant concessionary leases not covered by statute where the total value of the concession is £2,500 or less. Proposed concessionary leases in excess of these amounts, and those considered to be novel or contentious (regardless of their value), should be referred to the Department before any commitment to granting the lease is made, with the following information:

- a copy of the DV's report giving the current market value both for a lease and a sale
- a statement of the reasons for the HA's recommendation, including details of the advantages (both general and financial) which are expected to accrue to the NHS
- the reasons why the organisation concerned cannot pay the full market rent
- any additional relevant information.

2.24 *Calculation of the Value of a Concession.* The value of a concession (ie the loss to the public purse) must be calculated in accordance with the table shown at Appendix 2A.

2.25 *Accounting Arrangements.* Where an RHA authorises a concession covered by statute amounting to £250,000 in value or less, notation in the Department's Appropriation Account is not necessary and no special accounting action needs to be taken by the HA in respect of the consequential loss of rental income over the life of the lease.

Where an RHA grants a concession not covered by statute amounting to £2,500 in value or less, the consequential loss of rental income over the life of the lease should be regarded as a 'claim abandoned' under HC(80)3 and recorded as such in the HA's Losses Register and Statement. *HAs should also notify the Department giving details of the property, the reason for the lease and the value of the loss over the life of the lease.*

2.26 *Terms.* The length of a concessionary lease should not exceed 7 years unless there are sound health service related reasons for a longer period. Otherwise terms should be as for a normal lease but with the following additional clauses:

- the lessee to permit the HA to carry out regular checks to ensure that the terms of the lease are being properly adhered to, and that the property continues to be used for the purposes of the concessionary lease

- the lease to determine absolutely and the premises to revert to the Secretary of State, if the premises are no longer used for, or are no longer required for, the purposes of the concessionary lease or if any attempt to change the use to other purposes is made.

If an agreed lease relates to a site which, although not declared surplus, is considered as having no planned future NHS use, it must be a condition that any building constructed on the site would revert to the Secretary of State on termination of the lease (the DV should be made aware of any such condition so that he can take this into account when giving his Opinion of Value).

2.27 *Renewal.* If it is proposed to renew a concessionary lease on expiry (whether on the same terms or not) the proposal should be re-evaluated and a fresh authorisation sought from the Department if appropriate. HAs must not give prior indication to the leaseholder that renewal will be automatically given. Renewal must always be considered well in advance of the expiry of the current lease.

High Court Hearings

2.28 The Department's Solicitor (01-353 2090 extension 3126) must be notified in advance of any High Court hearing to which the Secretary of State is a party.

Table for Calculating Values of Concessionary Leases

Reproduced from Table 1 in "Investment Appraisal in the Public Sector: A Technical Guide for Government Departments" (HM Treasury 1984)

PRESENT VALUES OF £1 PER YEAR FOR A DISCOUNT RATE OF 5 PER CENT

Year(s)	Present value of £1 per year	Year(s)	Present value of £1 per year
1	0.952	16	10.838
2	1.859	17	11.274
3	2.723	18	11.690
4	3.546	19	12.085
5	4.329	20	12.462
6	5.076	21	12.821
7	5.786	22	13.163
8	6.463	23	13.489
9	7.108	24	13.799
10	7.722	25	14.094
11	8.306	26	14.375
12	8.863	27	14.643
13	9.394	28	14.898
14	9.899	29	15.141
15	10.380	30	15.372

Department of Health Note

The total loss arising from the grant of a concession should be assessed in the following way:

Annual market rent (as recommended by the DV) less annual nominal rent (as proposed), discounted at 5% over the life of the lease as applied by the appropriate present value factor shown in the table above.

Thus, for example, for a lease for a term of 5 years where the market rent is £9,000 per annum and the nominal rent is £10 per annum, the total cost of the concession will be:

(£9,000 − £10) discounted at 5% over 5 years

= £8,990 × 4.329 (present value factor for 5 years)

= £38,917.71 (say £38,918).

Procedure Paper 3 — Secretary of State as Tenant

General

3.1 Where it is not possible to purchase property, or where purchase is clearly uneconomic or inappropriate, HAs may take leases provided that this course of action is in accordance with the option appraisal. However, the Department has only limited delegated authority to approve the taking of leases and proposals to take leases (or extensions of leases) where the rental exceeds £50,000 per annum, or where the premium for the lease exceeds £250,000, should be submitted to the Department with all supporting background papers for reference to the Treasury.

3.2 Before entering into leases HAs should seek professional and legal advice. Once a lease has been taken HAs must ensure that its terms and conditions are complied with. Where a lessor alleges breach of repairing obligations in the lease and makes a claim for dilapidations, the DV should be consulted on whether the claim should be disputed and expert advice sought.

Rent Reviews

3.3 Rent review notices must be promptly referred to the DV for advice and responded to within the time limits.

Improvements to Premises

3.4 Before carrying out any improvements to leased property, HAs should have regard to the provisions of section 3 of the Landlord and Tenant Act 1927 and apply the necessary procedures starting with the service on the landlord of a notice specifying the proposed improvement.

3.5 Any improvements carried out by a tenant during the tenure of a lease accrue to the lessor on the expiration of the lease but, under the provisions of Part 1 of the 1927 Act, compensation may be payable in certain circumstances at the termination of a tenancy for improvements made by a tenant or his predecessors. The tenant's claim for compensation must be made in the manner prescribed by section 1(1) of the 1927 Act and served on the landlord within the time limits prescribed by section 47 of the Landlord and Tenant Act 1954.

3.6 On renewal of a lease the provisions of Part II of the 1954 Act (as amended by the Law of Property Act 1969) may

apply to the extent that the new rent can reflect improvements carried out by the tenant or his predecessors.

Renewal/Termination

3.7 Not less than 12 months before the termination of a lease, HAs must consider whether to seek a renewal or surrender of the lease. In taking the necessary action HAs must observe the provisions of Part II of the 1954 Act (as amended by the Law of Property Act 1969). In default of action under the Act by either party to determine the lease, the current contractual tenancy continues automatically by virtue of section 24(1).

3.8 Where it is decided that the need for the premises has ceased, or that they can be released by making other accommodation available, steps should be taken to determine the tenancy by notice to quit given on behalf of the Secretary of State (section 24(2)) or, in case of a term of years certain, by notice under section 27.

3.9 Where there is a continuing need for the premises HAs can, in certain circumstances, request a new tenancy under section 26 but HAs need not normally initiate action for renewing the lease unless the landlord serves a notice in accordance with section 25 to terminate the tenancy. In that event, a counter notice under sub-section (5) must be served. Where possible a new lease should be negotiated with the landlord. If no agreement can be reached the HA must apply to the Court for a new tenancy not less than 2 months, nor more than 4 months, from the time of initial notice under section 26 or 25 as the case may be, otherwise the rights both to remain in the premises and to apply to the Court are generally lost.

3.10 If the landlord indicates his opposition to granting a new tenancy on one or more of the grounds set out in paragraphs (a) to (g) of section 30(1), and it appears likely that he will succeed in his opposition, the HA should actively pursue the option of finding alternative accommodation. Where grounds (e), (f) or (g) apply, and the HA considers surrendering the tenancy, they should seek to recover, by agreement, compensation similar to that payable in accordance with section 37 and the Landlord and Tenant Act 1954 (Appropriate Multiplier) Order 1984 (SI 1984/1932). Failing agreement with the landlord the HA should pursue their statutory claim to a tenancy and compensation by resort to Court proceedings.

Abandoned Claim for Compensation

3.11 Where it is proposed that the Secretary of State's statutory right to compensation under the Acts of 1927 and 1954 should not be exercised, any financial loss should be regarded as a 'claim abandoned' and dealt with under the Department's current guidance on Losses and Special Payments. If the loss is £2,500 or less, the RHA can approve the write-off without reference to the Department, though it is still necessary to record the loss on the HA's Losses Register and Statement. Where the loss exceeds the RHA's delegated powers, the prior approval of the Department should be sought before any agreement is made to waive the compensation.

High Court Hearings

3.12 The Department's Solicitor (01-353 2090 extension 3126) must be notified in advance of any High Court hearing to which the Secretary of State is a party.

Procedure Paper 4 — Disposal of Residential Property

General

4.1 The 'right to buy' legislation (the Housing Act 1985 as amended) does not apply to Crown property. However, it is the Department's general policy to allow occupiers (regardless of whether they are employees or not) to acquire the accommodation they occupy if it is surplus to NHS requirements (ie will not be replaced), on terms similar to those under the statutory scheme. HAs must therefore give occupiers of surplus property a first option to acquire the property they occupy unless to do so would be:

- to the detriment of the value of the estate in general (eg if a property is situated within the curtilage of a hospital which itself has been declared surplus, or is likely to be declared surplus in the next 4 years, and the DV considers that the piecemeal sale of parts of the estate would detract from the overall value of the whole site), or

- against sound financial policy (eg a house standing in a large area of grounds which have a development value and where demolition of the house and development of the complete site would make better financial sense).

Where, for the above reasons, sale to an occupier is considered undesirable, the HA should, wherever possible, offer the occupier an alternative surplus property and include the period of the first tenancy in the discount calculation for the alternative property.

Planning Permission

4.2 Where surplus residential property lies within the curtilage of a hospital, local planning authorities may take the view that its occupation independently of the hospital would involve a material change of use and so require planning consent. HAs must therefore discuss with local planning authorities the disposal of such property and, if the planning authority requires a planning application to be made, HAs should either comply or advise intending purchasers of the need to do so. Applications for planning permission will not be required for residential property which is situated outside the curtilage of a hospital.

Disposal Action

4.3 Where there are no impediments to disposal, the HA must offer the occupier the opportunity of purchasing the property. There is no need to advertise a property for sale where disposal to an occupier has been agreed.

Leasehold Property and Flats

4.4 Leasehold property may be sold to occupiers where the terms of the lease so permit and where the lease has 21 years or more to run, provided that the sale does not create a new lease. It is not anticipated that HAs will in general be able to dispose of individual flats in the same way as surplus houses, but if this is practicable and the flats are clearly surplus to NHS needs they should be treated in the same way as surplus houses.

4.5 Where HAs propose to dispose of complete blocks of flats they should give the occupiers an opportunity of first refusal analagous to the relevant provisions in Part I of the Landlord and Tenant Act 1987. (An explanatory booklet (''Right of First Refusal'') on the operation of Part I of the Act can be obtained if required from DOE).

Valuation

4.6 The DV must be instructed that the property should be valued on the following assumptions:

- Vacant possession — on the assumption that the occupier or his family are not in the market
- Exclusion of occupier's improvements — which should be agreed before the DV is instructed
- Exclusion of occupier's disrepair under the terms of the lease.

Appeals

4.7 Where the occupier challenges the valuation of the property a meeting should be arranged between the DV and the occupier. The occupier can then discuss the matter with the DV and advance reasons for a lower valuation. The DV will advise whether the valuation is to be revised and, if so, the new figure.

Discount

4.8 To qualify for discount the occupier must have completed 2 years' occupation and the property must be surplus to NHS requirements. Where the occupier qualifies, discount off the DV's valuation must be calculated as follows:

- Houses — after 2 (but less than 3) years' occupancy 32% with 1% added for each additional year up to a maximum of 60% after 30 years or more, subject to an overall limit of £50,000 and the cost floor calculation.

- Flats — after 2 (but less than 3) years' occupancy 44% with 2% added for each additional year up to a maximum of 70% after 15 years or more, subject to an overall limit of £50,000 and the cost floor calculation.

The discount calculation should be as at the date of the DV's report. Occupancy of previous NHS accommodation may be taken into account both for the qualifying period and the calculation of discount where it can be established that the previous property is, or has been, also declared surplus to requirements.

Offer to Occupier

4.9 The offer to the occupier should show the amount of the DV's valuation, the amount of discount applied and the net cost of the purchase to the occupier. The offer should contain a time limit of 6 months and the occupier should be advised that the offer will lapse at the end of that period. In the event that the occupier expresses a renewed interest after the offer has lapsed, a fresh valuation should be sought, the discount recalculated and a revised offer made.

Cost Floor

4.10 The Secretary of State for the Environment has made the Housing (Right to Buy) (Cost Floor) Determination 1984, (as amended by the 1989 Determination), which establishes a cost floor below which the discounted figure must not fall. A similar arrangement applies to sales of NHS property. The cost floor figure will be an amount equal to the aggregate of costs (attributable to the property) incurred within the 8 years before the date of the offer to the occupier. The relevant costs will comprise:

- the construction of the property (including site development works and the acquisition of land)
- the acquisition of the property
- any works to the property — other than repairs, maintenance or works to remedy any defects.

4.11 The cost floor figure must be calculated for each sale and applied except where the aggregate of relevant costs is less than £5,000. Where the amount of the relevant costs cannot readily be ascertained, an estimate should be used. In all cases the cost floor figure must be certified (with written supporting statements as necessary) by a responsible officer of the HA. In cases where the certified cost floor figure is higher than the current open market value, the property should be offered to the occupier at current market value.

Conveyance and Completion

4.12 The conveyance for any property sold at a discount must contain a clause requiring the repayment, as a second charge after the repayment of the mortgage, of the discount outstanding to the Secretary of State where the property is resold within three years of the date of purchase. However, if requested, HAs may agree to the Secretary of State's interest ranking behind any additional or subsequent home improvement loan which may be obtained for the purpose of remedying the condition of the property. The completion procedures should be as for any normal land transaction. Each side must bear its own costs and a reasonable time should be allowed for the purchaser to arrange a mortgage, etc.

Occupier's Inability to Purchase

4.13 Where the occupier of a surplus property indicates that he is unable to purchase the property for financial reasons the HA may, if they have other surplus property, offer an alternative less expensive property. Where the occupier is prepared to buy an alternative property the period of the first tenancy should be included in the discount calculation.

Sales other than to Occupiers

4.14 Where residential accommodation is to be sold on the open market the DV must be asked to advise on the selection of a firm of agents to handle the sale and also advise on fees, terms of employment, etc. The selected agents must be instructed to sell the property for the maximum possible price and the final sale figure must be agreed by the DV.

Houses of Non-Traditional Design

4.15 Some prefabricated reinforced concrete (PRC) houses designed between 1920 and 1960 have been found to be of faulty construction. Information sheets to assist in identifying faulty PRC houses are available from the Building Research Establishment, Garston, Watford WD2 7JR. There is no reason why the sale of faulty PRC houses should not go ahead provided that all prospective purchasers (whether they are sitting tenants or not) are made fully aware of the defects in the properties, the fact that compensation would not become payable in the event of the defects becoming worse and of any exceptional maintenance requirements. Potential purchasers must also be advised that, because of the attitude of some lending institutions, difficulty may be experienced when dwellings are offered for sale in the future. (A specimen letter is available, if required, from the Department.)

Procedure Paper 5 — General Property Matters

Registers of Public Bodies' Land

5.1 Part X of the Local Government Planning and Land Act 1980 provides for the registration of public bodies' land which, in the opinion of the Secretary of State for the Environment, is either unused or insufficiently used. For this purpose the Secretary of State for the Environment may direct public bodies to give him such information as he may specify about land held by them or their wholly-owned subsidiaries (whether the land is required for future use or not) in an area to which Part X of the Act applies. Section 95(4) of the Act provides that Crown land may be registered and Ministers have agreed that HAs will participate on a non-statutory basis.

5.2 DHAs are asked to compile and maintain a register of all unused or underused land of 0.1 hectare (0.25 acre) in area in which the Secretary of State holds a freehold interest, or a leasehold interest with 7 or more years to run. The register should show the position as at 31 March each year. Once the register is complete DHAs should:

- by 30 June each year, make the register available, at their official address, for inspection and copying by members of the public at all reasonable hours
- by 30 June each year, copy the register to the local authority in whose area the land is situated and advise them of the address where any plan of land on the register may be obtained
- by 31 July each year, provide a summary of the information on the register to the Department of the Environment (ICD1 Division, Room P2/081, 2 Marsham Street, London SW1P 3EB — Tel: 01-276 4463).

The information to be included in the register and the summary is given in Appendix 5A.

5.3 For the purposes of the register 'land' includes buildings; 'unused land' includes vacant and derelict land; and 'underused land' is defined as:

- land of which less than 70% is in current use
- land of which 70% or more is in use but the use is temporary or not for any purpose stated in any current

planning permission held or any structure/local/ development plan.

Both unused and underused land includes land held for future operational needs, land which has ceased to be used for operational purposes (whether or not it has been declared surplus) and land occupied by buildings awaiting demolition.

5.4 Land should not be registered if:

- it has not been owned for the 12 months preceding the date on which the register entry is required
- it is both held and used for public open space or for statutory allotments or smallholdings or for recreation
- it needs to be maintained in its present state for reasons of security, safety or health.

5.5 Generally, if there is doubt about whether land is unused or insufficiently used it should be reported with a brief indication of the relevant facts so that the Secretary of State for the Environment can decide whether the land should be registered.

Easements

5.6 RHAs may approve the granting and taking of easements over property where to do so allows a better use to be made of the estate or facilitates operations by statutory undertakers. The siting of an easement on NHS land must be carefully considered to ensure that it does not adversely affect the development of the land. Appropriate indemnity should be included in suitable cases (see Appendix 5B for the forms of indemnity to and by the Crown). An easement must be granted by Deed.

5.7 Easement proposals must be referred to the DV for advice and negotiation of suitable terms except where an easement is required by a statutory undertaker providing an incoming supply solely for the benefit of an NHS development and the agreement for the supply covers the terms, siting and maintenance of the supply line. Payments for easements taken for bridges or pipes crossing operational waterways (managed by British Waterways) or railways (managed by British Rail or London Regional Transport) are subject to National Agreements negotiated with the Valuation Office.

5.8 There may be cases where it will be more convenient or desirable to proceed by way of agreement under section 351

of the Public Health Act 1936, eg in the case of the provision of public sewers or water mains where the undertaker is a local authority supplying the service under the Act. Similarly, it may be desirable to apply the provisions of the Water Act 1945 (as modified by the Water Act 1973) by agreement, where statutory water undertakers are concerned.

5.9 Where an easement for a gas pipeline has been granted, it should be noted that sections 27 and 31 of the Pipelines Act 1962 impose restrictions on the operations which can be carried out within 10 feet of the centre of the pipeline. The terms of the Deed of Grant normally oblige the HA to notify British Gas plc in writing of any proposed activity within the pipeline easement.

Wayleave Agreements with Electricity Boards

5.10 The Department entered into Master Agreements with the British Electricity Authority and the Area Electricity Boards (except the Yorkshire Area Board) between 1953 and 1965. The agreements cover the terms on which rights relating to the crossing of NHS land by electricity lines and the erection of supports for these lines, should be granted by a Supplemental Agreement if a wayleave is permitted. The type of Master Agreement and Supplemental Agreement are shown in Appendices 5C and 5D respectively. The original copy of each Master Agreement is held by the Department and RHAs have copies of the agreements relating to their areas. RHAs should ensure that Supplemental Agreements are held for all wayleaves granted to Electricity Boards within their region.

5.11 The Master Agreements provide for a review of the annual rent payable for wayleaves. The rental payable for wayleaves where electricity lines cross NHS land, and annual compensation payments where the installation interferes with agricultural operations, will be made in accordance with the agreement made between the National Farmers' Union, the County Landowners' Association, the Central Electricity Generating Board and Area Electricity Boards. Where such payments are due the Electricity Board will supply details.

Wayleave Agreements with British Telecommunications (BT)

5.12 Negotiations are currently going on between the Property Services Agency and BT, via HM Treasury, to reach agreement for all BT apparatus on Government property. Until an agreement is reached, those in HAs responsible for signing wayleave agreements should endorse the new wayleave agreements (BT's form A512(a)) as follows:

> "The agreement is granted pending the conclusion of negotiations on the terms of a Master Agreement cur-

rently the subject of discussions between British Telecommunications plc and the Property Services Agency of the Department of the Environment and that agreement will be retrospectively applied to this agreement in due course".

De Minimis Provisions

5.13 Where HAs are requested to release small areas of land (eg for a transformer sub-station) they may do so in accordance with the DV's recommendations provided that the disposal does not conflict with the development potential of the land or the Estate Control Plan and can be defended on de minimis grounds. Where sale is not considered appropriate the granting of a lease or an easement should be considered.

Direction Relating to Grant of Licences, Wayleaves, etc

5.14 RHAs may delegate authority to DHAs within the terms of the Direction dated 3 July 1989 to arrange licences and other rights such as wayleaves not amounting to easements, in the name of the Secretary of State.

Contributions in Lieu of Rates

5.15 Property occupied by or on behalf of the Crown for public purposes is exempt from rates but a contribution in lieu of rates is payable to the Rating Authority equivalent to the amount of general rates payable by a normal rateable occupier. In the event of any queries arising on payments including any claim by a Rating Authority for rating unoccupied property under section 17 of the General Rate Act 1967, HAs should consult the Rating of Government Property Department, Jameson House, 69 Notting Hill Gate, London W11 3JU (01-229 9841).

5.16 To facilitate adjustment in the valuation list of ratable values, HAs should notify the Treasury Valuer at the above address of details of any demolition of, or addition or alteration to, NHS property. Notifications should be sent in January and July of each year on form R15. Where there are no changes, NIL returns should be sent (supplies of form R15 can be obtained from the Treasury Valuer).

Insurance of Buildings and Equipment

5.17 Government Departments carry their own insurance cover. Property vested in the Secretary of State should not therefore be commercially insured. If a lessor requires commercial insurance as a condition of the lease, or if only part of a building is leased and the insurance policy covers the whole of the building, HAs should comply with the insurance

requirements of the lessor. Certain specialised equipment (eg lifts, hoists, boilers, etc) should be insured where insurance ensures periodic expert inspection, thereby reducing the risks of loss or damage.

Use of HA Managed Property by Centrally Managed Bodies and Family Practitioner Committees

5.18 Where HA managed property is occupied as a minor occupier by a centrally managed body responsible to the Secretary of State (or by a Family Practitioner Committee) rent is not payable but a proportionate charge should be made for maintenance and running costs, including a share of the rates contribution, and the costs of other services which may be provided. HAs should draw up an appropriate agreement in each case defining the nature and basis of charging.

User Rights

5.19 Article 5 of the NHS (Transferred Local Authority Property) Order 1974 (SI 1974/330) provides for the continued use by the Secretary of State, for the purposes of the health service, of local authority premises not transferred to him under the NHS Reorganisation Act 1973 but used for health or school health purposes immediately before 1 April 1974 and, conversely, for the exercise of user rights by local authorities in premises so transferred to the Secretary of State. The Order also provides for user rights to be exercised on such terms and for such period as may be agreed by the Secretary of State and the local authority or, failing such agreement, by determination by arbitration. Departmental guidance issued to HAs and local authorities at reorganisation indicated that user rights should be stabilised by negotiating financial terms limited to an appropriate share of running expenses and any outstanding loan charges. Disputes over terms or conditions of user rights are not subject to statutory time limits. Any attempt by a local authority to impose limitations on the Secretary of State's exercise of user rights should be reported to the Department where the matter cannot be resolved locally. The DV would not normally be involved unless it was decided that a current market (commercial) rental was payable.

5.20 User rights retained by the Secretary of State in local authority property are safeguarded by Article 4 of the Local Authorities (England) (Property, etc Further Provision) Order 1974 (SI 1974/406). A local authority proposing to develop, sell or otherwise dispose of property in which the Secretary of State is entitled to user rights, is required first to consult the HA concerned and to agree arrangements with them. If agreement cannot be reached the HA should consult the Department. Although there is no similar statutory procedure covering local authority user rights in health service

property, HAs will act as if there were and apply the same principles in all cases where it is proposed to develop or dispose of health service property in which a local authority is entitled to user rights.

Illegal Occupation of NHS Property

5.21 Any illegal occupation of NHS property (whether surplus or not) should be reported to the RHA's legal adviser so that appropriate action can be considered.

5.22 Where it appears that a property has been occupied by squatters, an officer of the HA, accompanied (if possible) by a Police Officer, should visit the property and warn the squatters that they are trespassing and ask them to leave. If homelessness is likely to be caused, the local Housing Department should be consulted with a view to alerting them as soon as possible of the impending need for temporary or permanent accommodation. The local Social Services Department should also be informed. (This is particularly important where children or other vulnerable people (eg elderly or disabled) are involved.) The results of the consultations should be recorded.

5.23 If the verbal request to leave is ignored, the RHA's legal adviser should repeat the request in writing. If after a period of 7 days, this is still ignored legal action should be instituted to regain vacant possession of the property. If the proceedings are to be heard in the High Court the Department's Solicitor (01-353 2090 extension 3126) must be advised in advance of the date of the hearing.

5.24 Where gypsies or other caravan dwellers camp without authority on NHS property, the HA should report the matter to the local authority having responsibility under the Caravan Sites Act 1968 to provide properly equipped and managed caravan sites. The Gypsy Liaison Officer should be asked to arrange for the gypsies to be accommodated on a site under section 175 of the Local Government Planning and Land Act 1980. If the problem cannot be resolved legal action should be instituted as above.

Legacies or Gifts of Property

5.25 Legacies or gifts of property should only be accepted where the property can quickly be put to use. Where it cannot, it should be refused unless the donor gives a guarantee that all revenue costs will, for an agreed period of time, be fully met from non-Exchequer sources. Any benefaction or gift should be made on trust to the HA under sections 90 and 91 of the NHS Act 1977 and *not* to the Secretary of State.

Asbestos

5.26 In view of the possible health hazards from asbestos, care must be exercised when arranging for the disposal or demolition of buildings where such conditions exist. Where property is being disposed of, the Regional Estate Manager must be asked whether asbestos (other than asbestos cement products such as roofing and guttering) is present and, if so, whether it could constitute a significant health hazard. Accessible asbestos insulation should already have been identified and be known to HAs (see Safety Information Bulletin SIB(84)16). If asbestos is known or suspected to be present, potential purchasers must be warned by a specific reference to that effect in the sale particulars. They should be given such relevant information as is known to HAs and their attention should be drawn to their obligations under the health and safety legislation for dealing safely with any asbestos which may be present, especially if demolition is envisaged. Prominent warning notices should be fixed immediately inside the entrance(s) to buildings when they are vacated. Should a potential purchaser enquire about the presence of asbestos in a building where no warning has been given in the particulars of sale, a reply in the following terms should be given:

> "The building has been inspected for health hazards due to asbestos. The vendor is not aware of any such hazard but no assurance is given that such hazard may not exist or may not arise in future".

Disposal to Former Owners

5.27 In certain circumstances surplus NHS property must be offered back to former owners or their successors before it is put on the market. The ('Crichel Down') rules which determine this course of action are set out in Appendix 5E. They apply to all Crown property (whether formerly in agricultural use or not) if it was originally acquired compulsorily or under threat of compulsion. All property acquired by the NHS, *whether by agreement or compulsorily* (other than that acquired by gift or bequest), falls within the category, as well as property transferred under NHS legislation or from other Government Departments where the previous acquisition would have qualified. The requirement to offer back does not, however, apply where the property was publicly or privately offered for sale immediately before the negotiations for acquisition.

Minerals on NHS Land

5.28 By common law all mines and minerals beneath the soil belong absolutely to the owner (freeholder), but all petroleum, gold and silver mines are vested in the Crown, and

by Statute all interests in coal are vested in the British Coal Corporation.

5.29 Any proposal to grant a commercial licence or lease of NHS land for the extraction of minerals (eg chalk, gravel) needs careful consideration. In taking a decision the HA's professional advisers must take into account that a development of this nature:

- usually requires a large land-take, and can affect the potential use and value of the land, including adjoining land
- is unlikely to be permitted in residential areas.

5.30 Where minerals development is seen as being a viable proposition, the proposal should be referred to the Mineral Valuer via the DV for advice on:

- the likely return, ie whether the proposal could be financially worthwhile
- the requirements for planning permission
- the likely effects on the environment
- the implications for the subsequent development of the land
- the arrangements to control and monitor the operation.

5.31 Where land is let the HA must ensure that only the designated area is used.

Form of Deeds

5.32 Deeds should be drawn in essentials as follows, although legal advisers may wish to modify the formula in some particulars. The form of a lease, deed of grant, etc would follow the same principle.

A. *Disposals*

THIS CONVEYANCE dated the ..... day of ..... is made BETWEEN THE SECRETARY OF STATE FOR HEALTH (hereinafter called "the Vendor") of the one part and [the Purchaser] (hereinafter called "the Purchaser") of the other part.

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*Or otherwise as appropriate, for example, in the case of a Company.

IN WITNESS whereof ..... REGIONAL HEALTH AUTHORITY (duly authorised on behalf of the Vendor as hereinafter mentioned) has caused its Corporate Common Seal to be hereunto affixed and the Purchaser has set his hand and Seal* the day and year first hereinbefore written.

SEALED on behalf of THE SECRETARY OF STATE FOR HEALTH by ..... REGIONAL HEALTH AUTHORITY (duly authorised in that behalf by Directions under Seal dated the 3rd day of July 1989) whose CORPORATE COMMON SEAL was hereunto affixed in the presence of:

SIGNED SEALED AND DELIVERED by [the Purchaser] in the presence of:*

B. *Acquisitions*

THIS CONVEYANCE dated the ..... day of ..... is made BETWEEN [the Vendor] (hereinafter called "the Vendor") of the one part and THE SECRETARY OF STATE FOR HEALTH (hereinafter called "the Purchaser") of the other part.

IN WITNESS whereof the Vendor has set his hand and seal* and ..... REGIONAL HEALTH AUTHORITY (duly authorised on behalf of the Purchaser as hereinafter mentioned) has caused its Corporate Common Seal to be hereunto affixed the day and year first hereinbefore written.

SIGNED SEALED AND DELIVERED by [the Vendor] in the presence of:*

SEALED on behalf of THE SECRETARY OF STATE FOR HEALTH by ..... REGIONAL HEALTH AUTHORITY (duly authorised in that behalf by the entry in Schedule 1 to the National Health Service Functions (Directions to Authorities and Administration Arrangements) Regulations 1989 (SI 1989/51) relating to section 87 of the National Health Service Act 1977, and by Directions under Seal dated the 3rd day of July 1989) whose CORPORATE COMMON SEAL was hereunto affixed in the presence of:

Stamp Duty

5.33 HAs have Crown exemption from paying stamp duty by virtue of section 55 of the Finance Act 1987. No stamp duty is therefore chargeable on any instrument which effects a land transaction by way of a conveyance, transfer or lease made, or agreed to be made, to the Secretary of State.

*Or otherwise as appropriate, for example, in the case of a Company.

Registration and Other Fees

5.34 Land Registry fees are payable in the normal way for all applications relating to NHS land transactions. Where HAs have a credit account with the Land Charges Department, Burrington Way, Plymouth, Devon PL5 3LP (0752 779831), applications made to the relevant District Land Registry for first registration of titles, or for registration of dealings in registered land, should be accompanied by vouchers (form J392) obtainable from the District Land Registry Office. This facility enables payment for all registration fees and other fees (eg for searches, office copies, etc) to be made on receipt of a monthly invoice.

Register of Public Bodies' Land

1. Information to be Published

The register should contain the following information:

(a) the location of the land in the form of an address or a description with, in either case, a grid reference for the geographic centroid of the land to the nearest 10 metres (the grid reference to be of 10 characters — 2 letters or numbers and the standard 8 figure grid reference), specifying the local authority area in which the land is situated;

(b) the area of the land in hectares and acres;

(c) the nature of the legal interest held in the land and any legal constraints on its use;

(d) the current use including temporary, occasional or intermittent uses;

(e) the purpose for which the land is retained;

(f) the total number of any empty dwellings on the land;

(g) any comments about the land which the DHA may wish to add.

2. Notification to DOE

The notification to DOE should show:

(a) the total area (in both hectares and acres) of land entered by the DHA on its register as at the beginning and end of the preceding financial year;

(b) the total area of such land which was brought into use in the preceding financial year;

(c) the total area of such land which was disposed of in the preceding financial year;

(d) the total area of land which was added to the register in the preceding financial year as being unused or underused;

(e) the local authority areas in which land entered by the DHA on its register as at the end of the preceding financial year was situated;

(f) the address of the DHA.

Crown Indemnities

1. Indemnity to the Crown

The following forms of indemnity to the Crown have been prepared in the light of the Crown Proceedings Act 1947. They should be adapted according to the circumstances of each case (see notes).

A. Standard Form

"(1) To indemnify the Crown and the Secretary of State against all costs charges expenses actions claims and demands in respect of any damage or injury (including injury resulting in death) to any property or person or in respect of financial or economic loss arising by reason of this (grant) or anything done or purported to be done pursuant to the provisions hereof and to be responsible for and to make good or pay compensation for any such damage or injury to the satisfaction of the Secretary of State.

(2) And this indemnity shall extend and apply to all sums payable (whether or not the payment thereof is legally enforceable) under any Statute Order Regulation Instruction Warrant or otherwise to any office servant or agent of the Crown or the personal representatives or dependants of any such person in respect of any such damage or injury.

(3) Provided always that the Secretary of State shall be at liberty to settle as he may think fit any such actions claims or demands by payment of such sum or sums as he in his discretion may consider reasonable and he may in his discretion cause any such damage to be reinstated and made good and the expenses incurred by him in so doing or in making any such payment shall be repaid by the (Grantee) to the Secretary of State on demand.

(4) Provided further that this indemnity shall not extend to the proportion (if any) of any such damage or injury caused or contributed to by the negligent act or default of any officer servant or agent of the Crown acting within the scope of his employment."

B. Modified Form

"To make good or pay compensation for any damage or injury (including injury resulting in death) to any property or person and/or for any actionable financial or economic loss

sustained by a third party or parties arising by reason of this grant or anything done or purported to be done or improperly omitted to be done hereunder and to keep the Crown and the Secretary of State fully and effectually indemnified against all costs charges expenses actions claims and demands in respect of any such damage injury or loss."

C. Notes

(i) Sub-clause (2) may be omitted in cases where officers etc mentioned in the sub-clause are unlikely to be brought into contact with grantee's operations, eg licences to connect and use drains.

(ii) If difficulty is experienced in obtaining the agreement of the grantee's Solicitor to the terms of sub-clause (3) it can be modified by adding after the word "fit" in line 2 the words "after consultation with the grantee".

(iii) Sub-clause (4) should only be inserted where the grantee requires such a limitation and the authority concerned agrees.

(iv) Any amendment made to the forms to the effect that the grantee is to have the conduct or control of any claims against the Crown or the relevant Department or that the grantee may defend any claim in the name and on behalf of the Crown or the relevant Department should be rejected.

(v) Wayleaves for electric lines should contain the standard form fuller indemnity including a right to settle claims. In the case of leases of transformer sites and similar documents, where the transformer is installed solely for the benefit of the Department's property and the lease limits its use to this purpose, the modified form of indemnity can be accepted if a particular Board objects to the standard clause.

2. Indemnity by the Crown

In agreeing the form of an indemnity to be given see generally that it relates only to matters arising from a breach of covenant by neglect or default of the Secretary of State his servants or agents and that it does not cover a third party's neglect or default, or the ordinary consequences of the exercise of any rights granted for which a consideration is being paid. There should also be words excluding liability in the event of the negligence of the grantor his servants or agents, a provision that the Secretary of State will be notified immediately any claim arises and that the grantor will not settle any claim without the consent of the Department. A form is set out below for use in Licences and other documents

where an indemnity can properly be required but it is not necessarily to be used in all grants of easements; the adoption of the form must depend on the circumstances of each case.

> "THAT the Secretary of State will at all times hereafter indemnify and keep indemnified the Grantor from and against all suits actions claims and demands brought or made against the Grantor by reason of the default or neglect of the Secretary of State in the exercise of the rights hereby granted or the breach of any of the covenants by the Secretary of State herein contained PROVIDED ALWAYS that the Grantor shall as soon as possible notify the Secretary of State of any such suits actions claims and demands brought or made against the Grantor and shall not compound settle or admit the same without the consent of the Secretary of State who may at his own expense defend dispute or settle the same in the name and on behalf of the Grantor who shall give to the Secretary of State (but at the Secretary of State's expense) all reasonable assistance that the Secretary of State may require for such purpose AND PROVIDED FURTHER that nothing herein contained shall be deemed to restrict or interfere with any rights of the Secretary of State against the Grantor or any other person in respect of contributory negligence".

Type of Master Agreement with Electricity Boards

Agreement made this day of between the Minister of Health* (hereinafter referred to as "the Grantor") for and on behalf of Her Majesty of the one part and the Electricity Board whose office is situated at (hereinafter referred to as "the Board") of the other part.

WHEREAS it has been agreed that if the Grantor shall consent to an electric line as defined by Section 32 of the Electric Lighting Act 1882 being placed by the Board on or over or under any land owned by the Grantor in trust for or on behalf of Her Majesty the terms, conditions and stipulations hereinafter appearing shall apply to such consent and to the said electric line so placed in pursuance thereof.

NOW IT IS HEREBY MUTUALLY AGREED AND DECLARED by and between the parties hereto as follows that is to say:—

1. SUBJECT to the provisions of this Agreement the Board on entering into an agreement with the Grantor expressed to be supplemental hereto (hereinafter referred to as "a supplemental agreement") shall be entitled to place and maintain the electric line mentioned and described in such supplemental agreement (hereinafter referred to as "the electric line") on over or under the land of the Grantor as specified in such supplemental agreement and in the position therein described and from time to time inspect repair alter or remove the same and for those purposes only to enter upon so much of the land of the Grantor as may be necessary in order to exercise the rights hereby granted.

2. THE Board hereby COVENANT with the Grantor as follows:—

a. During such time as the electric line shall remain placed on, over or under the land of the Grantor in pursuance of a Supplemental Agreement to pay to the Grantor an annual sum in respect of such line calculated in accordance with the rates of payment set out in Part I of the Schedule hereto and in addition whenever during the subsistence of a supplemental agreement the land across which the said line or any part thereof passes is arable land or cultivated

* Now the Secretary of State for Health

grassland and the Grantor is in actual occupation thereof a further annual sum calculated according to the purpose for which such land or the part thereof as aforesaid is from time to time being used in accordance with the rates of payment set out in Part II of the said Schedule hereto such sums to be paid on the Thirty first day of December in every year and the first payment thereof being a proportionate part of the said annual sum apportioned from the date on which entry was made on the land for the purpose of erecting the electric line pursuant to notice in that behalf to be paid on the Thirty first day of December then next following.

b. Before beginning any work in exercise of the rights arising hereunder or under a supplemental agreement to make arrangements with and obtain the consent of the tenant or other occupier for the time being of the land on which such work is to be carried out and to settle direct with such tenant or other occupier all claims for compensation for which the Board shall be liable to such tenant or occupier in respect of the construction of the electric line or the carrying out of any such work.

c. If any excavation is made or any soil removed in or from any land used for the purpose of Agriculture (as defined by the Agriculture Act 1947) during or in the course of the carrying out of any work hereby or by a supplemental agreement authorised carefully to remove and preserve the top soil and in reinstating the surface to replace such top soil in as near its former position as practicable.

d. To give to the Grantor or his agent and also to his lessees and tenants not less than Seven (7) days previous notice in writing (except in cases of emergency when as long notice as practicable shall be given) of the intention to enter upon the land of the Grantor pursuant to any authority herein contained otherwise than for the sole purpose of inspecting the electric line where notice of inspection is not expressly required in any supplemental agreement PROVIDED ALWAYS that if the Grantor or his agent shall indicate a route by which the Board shall cross the Grantor's land for the purpose of obtaining access to the electric line or of carrying out any works hereby authorised the Board shall follow such route except in cases of emergency where it is not reasonably practicable so to do.

e. To indemnify the Crown and the Grantor against all costs, charges, expenses, actions, claims and demands in respect of any damage or injury (including injury resulting in death) to any property or person arising

by reason of the rights and privileges hereby or by a supplemental agreement granted or of anything done or purported to be done pursuant to the provisions hereof or of such supplemental agreement and to make good or compensate for any such damage or injury to the satisfaction of the Grantor and this indemnity shall extend and apply to all sums payable (whether or not the payment thereof is legally enforceable) under any Statute Order Regulation Instruction Warrant or otherwise to any officer servant or agent of the Crown or the personal representatives or dependants of any such person in respect of any such damage or injury PROVIDED ALWAYS that the Grantor shall be at liberty after consultation with the Board to settle as he may think fit any such actions, claims or demands by payment of such sums or sum as he in his discretion may consider reasonable and he may in his discretion cause any such damage to be reinstated and made good and the expenses incurred by him in so doing or in making any such payment shall be recoverable from the Board And Provided further that this indemnity shall not extend to any such damage or injury caused solely by the negligent act or default of any officer servant or agent of the Grantor or of the Crown acting within the scope of his employment or to such proportion of such damage or injury as may be directly attributable to the contributory negligence of any such officer servant or agent while acting as aforesaid.

f. Within three (3) months after the determination of a supplemental agreement by notice given by the Grantor and prior to such determination pursuant to a notice given by the Board unless otherwise agreed to take down or dig up and remove the electric line referred to in such supplemental agreement and restore the surface of the land of the Grantor as far as possible to its original state and condition and to make good all damage done by such removal to the satisfaction of the Grantor or his Agent.

g. Not to permit or suffer any nuisance to arise or be caused or to exist in consequence of or in connection with or arising out of the existence of the electric line or the exercise or purported exercise of any of the rights hereby or by a supplemental agreement granted to the Board.

h. Not to place attach or exhibit on the electric line any sign notice or advertisement of any kind whatsoever other than the usual "danger" notices and other notices required for the safe operation of the Board's system.

i. To pay the sum of Thirty pounds (£30.00) towards the Grantor's costs and expenses of and incidental to the preparation and completion of every supplemental agreement and in addition the stamp duty (if any) on both parts thereof.

3. SUBJECT to the giving of at least Twenty one (21) days previous notice in writing to the Grantor and to the obtaining of any necessary consent from the tenant or occupier the Board shall be entitled to lop or cut any tree or hedge on any land owned by the Grantor which obstructs or interferes with or which is considered reasonably likely by reason of growth to obstruct or interfere with the construction maintenance or working of the electric line subject nevertheless to the payment by the Board to the Grantor of adequate compensation for any such tree or hedge so lopped or cut the amount of such compensation to be determined in the absence of agreement between the parties by arbitration as hereinafter provided PROVIDED ALWAYS that if the Grantor shall so desire he shall be entitled within Twenty one (21) days of the receipt of such notice to carry out such lopping and cutting at the cost of the Board the amount of such cost being payable by the Board to the Grantor on demand.

4. THE Grantor shall not be liable for any damage or injury which may happen to the electric line or to any person making constructing using maintaining altering or removing the same other than any such damage or injury caused solely by the negligent act or default of any officer servant or agent of the Grantor or of the Crown acting within the scope of his employment or such proportion of such damage or injury as may be directly attributable to the contributory negligence of any such officer servant or agent while acting as aforesaid.

5. IN the event of the Grantor at any time giving to the Board not less than six (6) months previous notice in writing stating that the electric line referred to in a supplemental agreement or any part thereof interferes with any proposed works of the Grantor or with the exercise by the Grantor of any of his powers or duties the Board shall at their own cost (unless the parties hereto can agree on measures for the abatement of such interference) within three (3) months from the expiration of such notice alter the height of or divert the electric line or the part thereof (as the case may be) to such alternative route (and either above or below ground as the Grantor may decide) on the adjoining land of the Grantor as shall be indicated by the Grantor for that purpose or if no such adjoining land is available or if an alternative route for the electric line is otherwise considered by the Grantor to be impracticable the Board shall remove the electric line or the part thereof so specified as aforesaid any alternative route so

accepted as aforesaid being substituted for all the purposes of the supplemental agreement for the route shown on the plan annexed thereto and the annual payments to be made thereunder being if necessary thenceforth adjusted accordingly and a memorandum of the change being endorsed on each part of such supplemental agreement.

6. 1. Either party may terminate this agreement by giving to the other not less than Twelve (12) months' previous notice in writing to that effect and upon the expiration of such notice this Agreement shall cease to have effect but without prejudice to the rights of either party which shall have accrued prior to such determination.

2. If upon the determination of this agreement no new agreement in substitution therefor shall be entered into between the parties hereto then every supplemental agreement shall by virtue of such determination likewise determine but without prejudice to the rights of either party arising thereunder prior to the date of such determination.

7. ANY matter which is referred to arbitration as herein provided shall be referred to and determined by a single arbitrator who failing agreement between the parties shall be nominated by the President for the time being of the Royal Institution of Chartered Surveyors subject to and in accordance with the provisions of the Arbitration Act 1950 or any statutory modification or re-enactment thereof for the time being in force.

8. ANY notice under this agreement or under a supplemental agreement shall be in writing and any notice to the Board shall be deemed to be sufficiently served if addressed to the Board and sent by registered post to Mucklow Hill Halesowen Birmingham and any notice to the Grantor shall be deemed to be sufficiently served if addressed to The Secretary of State for Health and forwarded by registered post to Richmond House, 79 Whitehall, London SW1A 2NS and a notice so sent by post shall be deemed to be given at the time when it ought in due course of post to be delivered at the address to which it is sent.

9. NOTWITHSTANDING that the provisions of the Electricity Supply Acts 1882 to 1936 and the Electricity Acts 1947 and 1957 are binding on the Board and applicable to the obligations of the Board in carrying out this Agreement nothing herein contained shall be deemed to make the provisions of those Acts binding on the Crown or on the Grantor

or in any way to restrict or otherwise prejudice or affect the prerogative rights of the Crown or any statutory or other power for the time being exercisable by the Grantor.

IN WITNESS whereof the Grantor has caused his Official Seal and the Board have caused their Common Seal to be hereunto affixed the day and year first above written.

The ..... Electricity Board

Supplemental Wayleave Agreement

AN AGREEMENT made this day of 19 BETWEEN
(hereinafter referred to as "the Grantor") for and on behalf of Her Majesty of the one part by
and
THE ELECTRICITY BOARD (hereinafter referred to as "the Board") by
District Manager of the
District of the Board of the other part Supplemental to an agreement (hereinafter referred to as "the principal agreement") dated the day of 19 and made between the Grantor of the one part and the Board of the other part WHEREBY IT IS AGREED as follows:—

Adapt to conform with Schedule

1. THE Board shall be entitled to place and during the subsistence of this agreement to maintain an electric line of the nature and description specified in the First Schedule hereto on/over/under the land of the Grantor in the position shown on the plan annexed hereto upon the terms and conditions set out in the principal agreement.

2. THE Board shall during such time as the electric line shall remain placed on over or under the land of the Grantor pay to the Grantor an annual sum calculated in accordance with the provisions of the principal agreement the amount of which at the date hereof is set out in the Second Schedule hereto but is subject to variation in accordance with the provisions of the principal agreement in the event of any change in the occupation or user of the said land of the Grantor.

3. THE Board may at any time remove the said electric line after giving one month's notice in writing to the Grantor of their intention so to do and on the expiry thereof or on the removal of the line (whichever is the later) this agreement shall determine.

4. THE Grantor may at any time determine this agreement by giving not less than six months previous notice in writing to the Board to that effect and upon the expiration of such notice the Board shall remove the electric line in accordance with the provisions of the principal agreement.

5. IN the event of the principal agreement or any other agreement to which this agreement shall by virtue of this clause be for the time being supplemental being determined pursuant to any provision therein and forthwith replaced by a new agreement between the parties hereto containing the terms which shall apply to electric lines of the Board placed on over or under the land of the Grantor this agreement shall thenceforth be read and construed as if it had been expressed to be supplemental to such new agreement instead of to the principal agreement and the annual sum specified in the Second Schedule hereto shall thenceforth be altered if necessary to conform with the rates of payment provided for in such new agreement.

AS WITNESS the hands of

on behalf of the Grantor and

on behalf of the Board the persons respectively authorised in that behalf.

The First Schedule

Part I. Overhead Lines

Delete where inapplicable

..... overhead conductors for transmitting electricity by (direct current) (..... phase 50 cycles per second alternating current) and at a pressure of..... volts together with..... earth wires and..... .....towers/masts/poles and all necessary stays for supporting the same and the equipment required by the Board in connection therewith as shown on the plan annexed hereto over the land owned by the Grantor on behalf of her Majesty in the Parish of in the County of

Part II. Cables

.....cables for transmitting electricity by (direct current) (.....phase 50 cycles per second alternating current) and at a pressure of.....volts and..... low voltage telephone signalling pilot and control cables along the route and in accordance with the sections shown on the plan annexed hereto under the land owned by the Grantor on behalf of Her Majesty in the Parish of
in the county of

The Second Schedule

Amounts of Annual Payments
Rental

SIGNED by the said

....

in the presence of:—

Name of Witness .....

Address .....

.....

.....

escription

SIGNED by the said

....

in the presence of:—

Name of Witness .....

Address .....

.....

Description .....

Extract from DOE Circular 18/84

Part III—Disposal of Surplus Government Land (to Former Owners)

Rules and Procedures

1. In October 1980 the Secretary of State for the Environment published for comment proposed new rules on the circumstances in which surplus Government land should be offered back to former owners and the procedures which should apply in such cases. At the same time he announced that these rules would be operated on a provisional basis pending final decisions.

2. This part of the memorandum sets out the new rules and procedures adopted in December 1981 following consideration of the comments made. They apply to Government Departments and Agencies other than Northern Ireland Departments, which are subject to separate rules. The approach to be adopted by local authorities and other statutory bodies in disposing of surplus land must depend on their particular functions and circumstances. Nevertheless the general principles underlying these rules and procedures are commended for application where appropriate.

The Land to which the Rules Apply

3. The rules will apply to all land, whether formerly in agricultural use or not, if it was acquired by or under threat of compulsion. A threat of compulsion will be assumed in the case of a voluntary sale if power to acquire the land compulsorily existed at the time unless the land was publicly or privately offered for sale immediately before the negotiations for acquisition.

4. The rules will also apply to land acquired under the blight provisions of section 192 of the Town and Country Planning Act 1971 (as extended by Part V of the Land Compensation Act 1973) but not to land acquired by agreement in advance of any liability under these provisions.

5. These rules will apply to all freehold disposals (in Scotland, outright sales).

6. Disposal of land acquired under the Small Landholders (Scotland) Acts 1886 to 1931 for land settlement purposes is regulated by statutory provisions. If land is not required for sale to sitting tenants it has to be offered back to the original owner or his successor in title at a price to be determined, failing agreement, by the Scottish Land Court. Arrangements for such disposals will continue under the statutory provisions which are on the whole more onerous than the new rules.

The General Rules

7. Where a Government Department wishes to dispose of land to which the rules apply, former owners will as a general rule be given a first opportunity to repurchase the land previously in their ownership provided that it has not been materially changed in character since acquisition. By material change is meant change such as the development of agricultural land with houses, afforestation of mainly open land, the redevelopment of an urban site with offices or substantial works to existing buildings which effectively alter their character. In deciding whether buildings or other works have materially altered the character of land regard will be had to the extent of the expenditure which would be needed to restore it to its original use. The erection of temporary buildings on land will not necessarily be regarded as a material change.

8. Where part of the land for disposal has been materially changed in character, but part has not, the general obligation stated above will apply to the latter part only.

Time Horizon for Obligation to Offer Back

9. This general obligation to offer back will not apply to:

(1) agricultural land acquired before 1 January 1935;

(2) other land becoming surplus and available for disposal more than 25 years after the date of acquisition.

Land will be regarded as having been acquired on the date of the conveyance.

Interests Qualifying for Offer Back

10. The offer back will normally be made to the former freeholder. If, however, at the time of acquisition the land was subject to a long lease, and this would still have had a long period to run as from the time when disposal action is being initiated (say 21 years or more), discretion is reserved to offer the freehold to the former leaseholder. In Scotland offer back will always be made to the former owner.

11. The term "former owner" as used in these rules (whether as applied to a former freeholder or former long leaseholder) is also intended to cover any successor of his, and by "successor" is meant the person on whom the property would clearly have devolved under the former owner's will or intestacy but for the Government's acquisition, and may include any person who has succeeded otherwise than by purchase to the adjoining land from which the land was severed by that acquisition.

Exceptions from the Obligation to Offer Back

12. The following are exceptions to the general obligation to offer back:

(1) where it is decided on specific Ministerial authority that the land is needed by another Government Department or Agency, ie that it is not in a wider sense surplus to Government requirements;

(2) in very exceptional cases where it is decided on specific Ministerial authority that there are strong and urgent reasons of public interest for disposal of the land as soon as practicable to a local authority or other public body possessing compulsory purchase powers;

(3) where small areas of agricultural land would have no satisfactory agricultural use even if used in conjunction with other agricultural land already in possession of the former owner;

(4) where it would be to the mutual advantage of the Government and an adjoining owner to make minor adjustments in boundaries by exchange of land;

(5) where it would be inconsistent with the purpose of the original acquisition to offer the land back as in the case of,

(i) land acquired under sections 16, 84 or 85 of the Agricultural Act 1947 or under section 31 or 57 of the Agricultural (Scotland) Act 1948;

(ii) land acquired under the Distribution of Industry Acts, the Local Employment Acts or any legislation amending or replacing those Acts which is resold for private industrial use;

(6) where the disposal is in execution of Government policies for the transfer to the private sector of the functions of providing particular services;

(7) where a disposal in respect of either,

(i) a site for development or redevelopment which comprises two or more previous land holdings or,

(ii) a site which consists partly of land which has been materially changed in character and part which has not,

and there is a risk of a fragmented sale of such a site realising substantially less than the market value of the site as a whole. However, in such cases any former owner who has remained in continuous occupation of the whole or part of his former property (by virtue of tenancy or licence) will be given a right of first refusal of that property or part of property as the case may be; and in the first type of case special consideration will be given to any case where a consortium of former owners has indicated a desire to purchase collectively.

13. In addition, in the case of a tenanted house as indicated below, any pre-emptive right of the former owner will be subject to the prior right of the tenant.

House Tenancies

14. Where a house, whether acquired under compulsory purchase powers or under statutory blight provisions, has a sitting tenant, the tenant will be offered the first opportunity to purchase the freehold. If the tenant does not wish to buy, the former owner will be given an opportunity to purchase, though this may be subject to the sitting tenant continuing in occupation of the house. This paragraph does not apply to a house being disposed of with associated land as an agricultural unit or to a house acquired with associated agricultural land but being disposed of in advance of that land.

Procedures for Disposal

15. Where it is decided that any land to be disposed of is subject by virtue of these rules to the obligation to offer back, then action will be taken to search out the former owner as follows.

Where Former Owner's Address Known

16. Where there is a known address for a former owner he will be formally offered by recorded delivery letter the opportunity of purchasing the land at District Valuer's valuation. He will be given two months from the date of the letter to respond indicating his intention to purchase. If he fails to respond or indicates that he does not wish to purchase then the land will be sold on the open market and he will be informed that this step is being taken. If he does wish to buy

he will have six weeks to agree terms from the date of the formal invitation from the District Valuer to negotiate the price. If the price cannot be agreed or negotiations with one or more of the parties to a sale become protracted beyond this period, or any reasonable additional period allowed, the property will be disposed of on the open market.

Where Address Not Known

17. Where the former owner is not readily traceable the disposing Department will contact the solicitor or agent who acted for him on the original transaction. If a present address of the former owner is then ascertained, the procedure at paragraph 16 will be followed. If, however, an address is not then ascertained the Department will proceed to advertisement, informing the Solicitor or agent that this has been done.

18. Advertisements inviting the former owner to contact the disposing Departments will be placed as follows:

(a) for all land (including houses), in not less than two issues of at least one local newspaper;

(b) for all land, other than houses, in the *London* or *Edinburgh Gazette* and in the *Estates Gazette*;

(c) for agricultural land, in England and Wales in the *Farmers' Weekly* and the *Farmer and Stockbreeder*, and in Scotland in the *Scottish Farmer*.

19. If there is no response from a former owner and nothing is heard from the solicitor within four weeks from the date of the latest advertisement the land will be disposed of on the open market. If he does indicate a wish to purchase he will have 6 weeks to agree terms.

Special Procedure where Boundaries of Agricultural Land have been Obliterated

20. Where land to be offered back is still predominantly agricultural in character, and could be sold as such, but cannot readily be sold back in its original parcels because of the changes which have taken place, eg the obliteration of boundaries, the procedures at the Annex will be adopted.

Terms of Resale

21. Disposals to former owners under these arrangements will be at a price reflecting current market value, as determined by the District Valuer. As to sales to sitting tenants

there can be no common practice because of the diversity of interests for which housing is held. Departments will nonetheless have regard to the terms set out in the Housing Act 1980 and the Tenants Rights etc (Scotland) Act 1980, as amended, under which local authorities are obliged to sell houses to tenants with the right to buy.

Special Procedures where Boundaries of Agricultural land have been Obliterated

(a) Each former owner will be asked whether he is interested in acquiring any land.

(b) Where a former owner expresses interest in doing so, every effort will be made, subject to what is stated below, to offer him a parcel corresponding as nearly as is reasonably practicable in size and situation to his former land.

(c) In large and complex cases or where there is little or no room for a choice between different methods of dividing into lots—for example, because of alterations in the character of the land, existing tenancies or the need not to leave the Department with unsaleable lots—it may be necessary to show former owners a plan indicating definite lots.

(d) Where more than one former owner is interested in the same parcel of land, it may be necessary to give priority to the person who owned most of the parcel or, in the case of near equality, to ask for tenders from interested former owners; but every effort will be made to see that each interested former owner has an offer of one lot.

(e) If a complete deadlock is reached in attempts to come to a satisfactory solution by dealing with former owners, the land will be sold by public auction in the most convenient parcels. Former owners will be informed of the date of the auction sale.

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